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Supreme Court, U.S.
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08-897

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In The
Supreme Court of the United States

COUNTY OF SAN BERNARDINO and GARY PENROD
as Sheriff of the COUNTY OF SAN BERNARDINO,
Petitioners,

v.

STATE OF CALIFORNIA, SANDRA SHEWRY, in her
official capacity as Director of California Department of
Health Services; and DOES, 1 through 50, inclusive,
Respondents.

*On Petition for Writ of Certiorari to the
California Court of Appeals Fourth District*

**VOLUME 2 OF APPENDIX TO
PETITION FOR WRIT OF CERTIORARI**

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January 2009

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IN THE
SUPREME COURT OF THE UNITED STATES

COUNTY OF SAN BERNARDINO,
and GARY PENROD as Sheriff of the
COUNTY OF SAN BERNARDINO,
Petitioners,

v.

STATE OF CALIFORNIA, SANDRA
SHEWRY, in her official capacity as
Director of California Department of
Health Services; and DOES,
1 through 50, inclusive,
Respondents.

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APPENDIX E

**SUPERIOR COURT OF THE CALIFORNIA
COUNTY OF SAN DIEGO**

No. GIC 860665

[Filed February 1, 2006]

COUNTY OF SAN DIEGO,)
)
Plaintiffs,)
)
vs.)
)
SAN DIEGO NORML, a California)
Corporation; STATE OF CALIFORNIA;)
SANDRA SHEWRY, Director of the)
California Department of Health)
Services in her official capacity; and)
DOES 1 through 50, inclusive,)
)
Defendants.)

JOHN J. SANSONE, County Counsel
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COMPLAINT FOR DECLARATORY RELIEF

Plaintiff County of San Diego ("the County") alleges as follows:

PRELIMINARY STATEMENT

Defendant San Diego NORML has threatened to sue the County for failing to comply with obligations imposed on the County by California's Medical Marijuana Laws (Cal. Health & Safety Code §§ 11362.5; 11362.7-11362.83.) Rather than wait for NORMAL's lawsuit, the County is filing this action seeking a declaration of its obligations to comply with California's Medical Marijuana Laws.

The County believes that it has a defense to San Diego NORML's threatened lawsuit – that California's Medical Marijuana Laws are preempted under the Supremacy Clause of the United States Constitution. Specifically, as required by treaty obligations, the United States has enacted legislation declaring that there is no accepted medical use for marijuana and has generally outlawed its use, possession, distribution and cultivation. Contrary to federal law and an international treaty, California has enacted laws declaring that certain persons have a right to use marijuana for medical purposes and has authorized those individuals to use, possess, distribute and cultivate marijuana without criminal sanction.

The County believes that San Diego NORML's lawsuit would fail because California's Medical Marijuana Laws are preempted under the Supremacy Clause of the United States Constitution (Article VI) because they conflict with a federal statute (the Controlled Substances Act) and an international treaty (the Single Convention on Narcotic Drugs). Thus, the County seeks a declaration that it is not required to implement California's preempted and therefore void Medical Marijuana Laws.

THE PARTIES

1. The County is a political subdivision of the State of California and is organized and existing under the laws of the State of California.

2. Defendant San Diego NORML is a California Corporation with its principal place of business in San Diego, California. San Diego NORMAL is part of a larger national organization that is the oldest and largest marijuana legalization organization in the country.

3. Defendant State of California ("State") is, and at all times herein mentioned was, a state government.

4. Defendant Sandra Shewry ("Shewry") is Director of the California Department of Health Services. As Director of the Department, she has responsibility for ensuring that the requirements of California Health & Safety Code §§ 11362.7 through 11362.83 are satisfied.

5. The true names and capacities of Defendants Does 1 through 50, inclusive, are unknown to the

County, and the County therefore sues said defendants by such fictitious names. The County will amend the complaint to allege the true names and capacities of the defendants sued herein as Does 1 through 50, inclusive, when ascertained.

REASON FOR THIS LAWSUIT

6. On November 7, 2005, attorney James T. Bentson, on behalf of San Diego NORML, sent a letter to the County's Board of Supervisors threatening to sue the County for violating California state law. Specifically, San Diego NORML threatened to sue the County for purportedly failing to comply with the obligations imposed on the County by California's Medical Marijuana Laws (Cal. Health & Safety Code §§ 11362.5; 11362.7-11362.83.) A true and correct copy of attorney Bentson's letter is attached hereto as Exhibit A.

7. Other entities have also threatened legal action against the County based on the County's purported failure to comply with the obligations imposed on the County by California's Medical Marijuana Laws. For instance, on January 19, 2006, American Civil Liberties Union Senior Staff Attorney Allen Hopper sent a letter to the County demanding that the County immediately begin complying with California's Medical Marijuana Laws.

8. Rather than wait for San Diego NORML or any other person or entity to bring a lawsuit against the County for failure to comply with California state law, the County seeks a declaration regarding whether its defense to San Diego NORML's threatened lawsuit – that California's Medical Marijuana Laws are

preempted by the Supremacy Clause – voids the obligations imposed on the County by those laws.

9. The County has named Defendants State and Shewry in this lawsuit because they are necessary parties to this litigation. Both of these defendants are responsible for enforcing California's Medical Marijuana Laws.

CALIFORNIA'S MEDICAL MARIJUANA LAWS ARE PREEMPTED

10. The United States, along with more than 150 other countries, is a party to the Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol ("Single Convention"). This treaty was entered into because "effective measures against abuse of narcotic drugs require co-ordinated and universal action." (Single Convention, pmbl.)

11. Marijuana (cannabis) is specifically addressed in the Single Convention. Marijuana is listed under Schedule IV of the treaty. For Schedule IV drugs such as marijuana, a party to the treaty "shall, if in its opinion prevailing conditions in its country render it the most appropriate means of protecting the public health and welfare, prohibit the production, manufacture, export and import of, trade in, possession or use of any such drug *except for amounts which may be necessary for medical and scientific research only*, including clinical trials therewith to be conducted under or subject to the direct supervision and control of the Party." (art. 2, § 5.b.)

12.If a party to the Single Convention decides to permit the cultivation of marijuana, it "shall adopt such measures as may be necessary to prevent the misuse of, and illicit traffic in, the leaves of the [marijuana] plant." (art. 28, § 3.)

13.If a party to the Single Convention decides to permit the cultivation of marijuana, "a single government agency" of the party must: (1) "designate the areas in which, and the plots of land on which, cultivation of [marijuana] for the purpose of producing [marijuana] shall be permitted"; (2) restrict cultivation of marijuana to only those cultivators licensed by the government agency; (3) specify the amount of land on which cultivation of marijuana is permitted; (4) provide that cultivators deliver their entire crop of marijuana to the government agency; and (5) have the exclusive right of importing, exporting, wholesale trading and maintaining stocks of marijuana.

14.The single Convention is not self-executing. It requires parties to take legislative or administrative action to carry out its provisions.

15.In 1970, Congress passed the Controlled Substances Act (21 U.S.C. §§ 801-904) in order to comply with its obligations under the Single Convention. 21 U.S.C. § 801(7). In the Controlled Substances Act, Congress determined that marijuana has "no currently accepted medical use in treatment in the United States." 21 U.S.C. § 812(b)(1)(B), 812(c)(sched. I)(c)(10). Therefore, Congress criminalized the manufacture, possession and distribution of marijuana for any purpose. 21 U.S.C. §§ 841(a), 844(a).

16. In addition, as authorized by the Single Convention, the United States has decided to allow cultivation of limited amounts of marijuana for research purposes. The United States has designated the National Institute on Drug Abuse ("NIDA") as the agency responsible for administering the cultivation of marijuana according to the terms of the Single Convention. NIDA has entered into a contract with the University of Mississippi whereby the Institute has the option in any given year of growing 1.5 or 6.5 acres of marijuana, or no marijuana at all, depending on the research demand. NIDA is the only legal source for marijuana in the United States.

17. In 1996, California voters sought to override Congress' determinations and the provisions of the Single Convention. California voters passed Proposition 215, which added Section 11362.5 to California's Health & Safety Code. Proposition 215 declares that "Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana" Cal. Health & Safety Code § 11362.5(b)(1)(A).

18. Contrary to the federal Controlled Substances Act, Proposition 215 declares that "patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction." *Id.* at subd. (b)(1)(B). Also contrary to the Controlled Substances Act, Proposition 215 declares that "no physician in this state shall be punished, or denied any right or privilege, for having recommended

marijuana to a patient for medical purposes.” *Id.* at subd. (c).

19. In 2003, the California Legislature enacted a statutory scheme implementing Proposition 215 (Cal. Health & Safety Code §§ 11362.7-11362.83). This statutory scheme requires the County to issue identification cards to “a person authorized to engage in the medical use of marijuana and the person’s designated caregiver” Cal. Health & Safety Code §§ 11362.7(g), 11362.71(b)(5).

20. Despite the provisions of the federal Controlled Substances Act, California’s statutory scheme declares that “[n]o person or designated primary caregiver in possession of a valid identification card shall be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana in an amount established pursuant to this article” Cal. Health & Safety Code § 11362.71(e).

21. The California Legislature also authorized patients and caregivers to cultivate “no more than six mature or 12 immature marijuana plants per qualified patient” even though under the Single Convention only the NIDA may license individuals to cultivate marijuana. Cal. Health & Safety Code § 11362.77(a).

22. Proposition 215 (except subdivision (d)) and its implementing legislation, California Health & Safety Code §§ 11362.7 through 11362.83, are preempted under the Supremacy Clause (Article VI, cl. 2) of the United States Constitution. The Supremacy Clause provides that the “Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made,

under the Authority of the United States, shall be the supreme Law of the Land" California's Medical Marijuana Laws --which declare that marijuana is an acceptable treatment for medical conditions, authorize its use, cultivation and possession for this purpose, and purport to immunize patients and caregivers from criminal prosecution --conflict with the federal Controlled Substances Act and the Single Convention on Narcotic Drugs and are therefore preempted.

FIRST CAUSE OF ACTION (Declaratory Relief)

23. The County refers to and incorporates herein by reference Paragraphs 1 through 22.

24. The County seeks a declaration whether it is obligated to comply with the requirements of California Health & Safety Code §§ 11362.7 through 11362.83.

25. The County also seeks a declaration whether Proposition 21 5 (Cal. Health & Safety Code § 11362.5 (excluding subsection (d)) and its implementing legislation (Cal. Health & Safety Code §§ 11362.7-11362.83) are preempted under the Supremacy Clause of the United States Constitution.

26. An actual controversy has arisen in that the County contends that it is not required to comply with California Health & Safety Code §§ 11362.5 (excluding subsection (d)) and 11362.7 through 11362.83 because those provisions are preempted under the Supremacy Clause of the United States Constitution, and Defendants contend that the County is required to

comply with those provisions because they are not preempted under the Supremacy Clause.

27. Based upon the foregoing, a clear, actual and present controversy has arisen between the County and Defendants, which controversy cannot be resolved without a judicial determination.

28. Accordingly, County seeks a judicial determination whether (1) it is obligated to comply with the requirements of California Health & Safety Code §§ 11362.7 through 11362.83 and (2) Proposition 215 (Cal. Health & Safety Code § 11362.5 (excluding subsection (d)) and its implementing legislation (Cal. Health & Safety Code §§ 11362.7-11362.83) are preempted under the Supremacy Clause of the United States Constitution.

WHEREFORE, plaintiff, the County of San Diego, prays for judgment, against Defendants, and each of them, as follows:

1. Declaring that Proposition 215 (Cal. Health & Safety Code § 11362.5 (excluding subsection (d)) and its implementing legislation (Cal. Health & Safety Code § 11362.7-11362.83) are preempted under the Supremacy Clause of the United States Constitution;

2. Declaring that the County has no obligation to comply with the requirements of California Health & Safety Code §§ 11362.7 through 11362.83;

3. For costs of suit incurred herein;

4. For attorneys' fees; and

5. For such other and further relief as the Court deems just and proper.

DATED: February 1, 2006 JOHN J. SANSONE,
County Counsel

BY /s/
THOMAS D. BUNTON,
Senior Deputy
Attorneys for Plaintiff
County of San Diego

APPENDIX F

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO**

Case No. GIC 861051

[Filed February 8, 2006]

COUNTY OF SAN BERNARDINO, and)
GARY PENROD as Sheriff of the)
COUNTY OF SAN BERNARDINO,)
)
Plaintiffs,)
)
vs.)
)
STATE OF CALIFORNIA; SANDRA)
SHIEWRY, in her official capacity as)
Director of California Department of)
Health Services; and DOES)
1 through 50, inclusive,)
)
Defendants.)

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Attorneys for Plaintiffs COUNTY OF
SAN BERNARDINO, and GARY PENROD

Exempt per Gov. Code §6103

COMPLAINT FOR DECLARATORY RELIEF

Plaintiffs COUNTY OF SAN BERNARDINO ("COUNTY"), a public entity, and GARY PENROD ("PENROD"), in his official capacity as the elected Sheriff of San Bernardino County, allege:

GENERAL ALLEGATIONS

1. The COUNTY is a political subdivision of the State of California, and is organized and existing under the laws of said State.

2. PENROD is a resident of the San Bernardino County, California, and is the duly elected Sheriff of the COUNTY. As Sheriff of the COUNTY, PENROD is responsible for enforcement of the laws of the Defendant STATE OF CALIFORNIA ("STATE"), as well as those of the United States. As such he is further charged with certain aspects of enforcing the STATE's medical marijuana laws, which he believes are in conflict with the laws of the United States.

3. The STATE is, and at all times herein mentioned was, a state government, organized and

existing within the United States, and subject to the United States Constitution.

4. Defendant SANDRA SHEWRY ("SHEWRY") is the Director of the California Department of Health Services (the "Department"), and is being sued in her official capacity as such. As Director of the Department, SHEWRY has responsibility for ensuring that the requirements of California Health and Safety Code sections 11362.7 through 11362.83, inclusive, are implemented throughout the State of California.

5. The true names and capacities of Defendants DOES 1 through 50, inclusive, are unknown to COUNTY and PENROD, who therefore sue said Defendants by such fictitious names. Plaintiffs will amend this complaint to allege the true names and capacities of said Defendants, once ascertained.

6. The United States, along with more than 150 other countries, is a party to the Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol ("Single Convention"). This treaty was entered into because "effective measures against abuse of narcotic drugs require coordinated and universal action." (Single Convention, pmbl.)

7. Marijuana (cannabis) is specifically addressed in the Single Convention, and is listed under Schedule IV of the treaty. For Schedule IV drugs such as marijuana, a party to the treaty "shall, if in its opinion prevailing conditions in its country render it the most appropriate means of protecting the public health and welfare, prohibit the production, manufacture, export and import of, trade in, possession or use of any such drug *except for amounts which may be necessary for*

medical and scientific research only, including clinical trials therewith to be conducted under or subject to the direct supervision and control of the Party.” (Single Convention, art. 2, § 5, subd. (b); italics added.)

8. If a party to the Single Convention decides to permit the cultivation of marijuana it “shall adopt such measures as may be necessary to prevent the misuse of, and illicit traffic in, the leaves of the [marijuana] plant.” (Single Convention, art. 28, § 3.)

9. If a party to the Single Convention decides to permit the cultivation of marijuana, “a single government agency” of the party must: (1) “designate the areas in which, and the plots of land on which, cultivation of [marijuana] for the purpose of producing [marijuana] shall be permitted”; (2) restrict cultivation of marijuana to only those cultivators licensed by the government agency; (3) specify the amount of land on which cultivation of marijuana is permitted; (4) provide that cultivators deliver their entire crop of marijuana to the government agency; and (5) have the exclusive right of importing, exporting, wholesale trading and maintaining stocks of marijuana. (Single Convention, art. 23, § 2, & art. 28.)

10. The Single Convention is not self-executing. It requires parties to take legislative or administrative action to carry out its provisions. (Single Convention, art. 40.)

11. In 1970, Congress passed the Controlled Substances Act (21 U.S.C. §§ 801-904) in order to comply with the United States’ obligations under the Single Convention. (21 U.S.C. § 801(7).) In the Controlled Substances Act, Congress determined that

marijuana has "no currently accepted medical use in treatment in the United States." (21 U.S.C. §§ 812(b)(1)(B), (c)(sched. I), (c)(10).) Therefore, Congress criminalized the manufacture, possession, and distribution of marijuana for any purpose. (21 U.S.C. §§ 841(1), 844(a).)

12. In addition, as authorized by the Single Convention, the United States has chosen to allow cultivation of limited amounts of marijuana for research purposes. The United States has designated the National Institute on Drug Abuse ("NIDA") as the agency responsible for administering the cultivation of marijuana according to the terms of the Single Convention. NIDA has entered into a contract with the University of Mississippi whereby the NIDA has the option in any given year of growing 1.5 or 6.5 acres of marijuana, or no marijuana at all, depending on the research demanded. NIDA is the only legal source for marijuana in the United States.

13. In 1996, California voters sought to override Congress' determinations and the provisions of the Single Convention. California voters passed Proposition 215, which added Section 11362.5 to California's Health and Safety Code. Proposition 215 declares that "Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and had been recommended by a physician who has determined that the person's health would benefit from the use of marijuana . . ." (Health & Saf. Code, § 11362.5, subd. (b)(1)(A).)

14. Contrary to the federal Controlled Substances Act, California's Proposition 215 declares that

“patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.” (Health & Saf. Code, § 11362.5, subd. (b)(1)(B).) Also contrary to the Controlled Substances Act, Proposition 215 declares that “no physician in this state shall be punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes.” (*Id.*, at subd.(c).)

15. In 2003, the California Legislature enacted a statutory scheme implementing Proposition 215 (Health & Saf. Code, §§ 11362.7 - 11362.83). This statutory scheme requires the COUNTY to issue identification cards to “a person authorized to engage in the medical use of marijuana and the person’s designated caregiver” (Health & Saf. Code, §§ 11362.7, subd. (g), & 11362.71, subd. (b)(5).) The scheme further eliminates all criminal sanctions associated with the possession of limited amounts of marijuana by authorized users (Health & Saf. Code, § 11362.765, subd. (a)), and permits authorized use of medical marijuana by prisoners and parolees. (Health & Saf. Code, §§ 11362.785, 11362.795.)

16. Despite the provisions of the federal Controlled Substances Act, the STATE’s statutory scheme declares that “[n]o person or designated primary caregiver in possession of a valid identification card shall be subject to arrest for possession, transportation, delivery, or cultivation or medical marijuana in an amount established pursuant to this article” (Health & Saf. Code, § 11362.7, subd. (e).)

17. The STATE's statutory scheme has further authorized patients and caregivers to cultivate "no more than six mature or 12 immature marijuana plants per qualified patient" even though under the Single Convention only the NIDA may license individuals to cultivate marijuana. (Health & Saf. Code, § 11362.77, subd. (a).)

18. The COUNTY and PENROD bring this lawsuit as they are required respectively under California law to implement and enforce the STATE's medical marijuana laws, and plaintiffs believe that those laws are preempted under the Supremacy Clause of the United States Constitution (article VI) because they conflict with a federal statute (the Controlled Substances Act) and an international treaty (the Single Convention). Further, the conflict between state and federal law creates confusion and uncertainty for law enforcement agencies, and for those, like PENROD, who are responsible for enforcing the law, both state and federal, thus adversely affecting the ability of law enforcement to safeguard and protect the public's health, welfare, and safety.

19. The conflict between state and federal law which is presented in this lawsuit has direct personal implications for PENROD and his deputies as they are sworn to uphold the Constitution of the United States, as well as the Constitution of the STATE, and must enforce both state and federal drug laws. As Sheriff of the COUNTY, PENROD must deal with conflicting state and federal interests concerning the medical use of marijuana in determining whether to:

a. Arrest persons observed to be in possession of a quantity of marijuana;

b. Seize observed cultivated marijuana plants and quantities of marijuana;

c. Allow authorized medical marijuana users who are confined as inmates in the COUNTY's detention centers access to medical marijuana while in COUNTY custody;

d. Oppose lawsuits seeking the return of medical marijuana seized by Sheriff's deputies and/or monetary damages for the loss of such marijuana;

e. Face exposure to liability, including punitive damages, under 42 United States Code section 1983 should he fail to grant authorized users access to medical marijuana; and

f. Return seized marijuana and marijuana plants to medical marijuana users upon order of a state court in direct violation of federal criminal law that categorizes marijuana as a Schedule I narcotic which is illegal to possess. (21 U.S.C. § 812.)

FIRST CAUSE OF ACTION
(Declaratory Relief)

20. The COUNTY and PENROD reallege and incorporate herein by this reference Paragraphs 1 through 19, as though set forth in full.

21. An actual controversy has arisen and now exists between the COUNTY and PENROD on the one hand, and the STATE and SHEWRY on the other hand, in that the COUNTY and PENROD contend, and the STATE and SHEWRY deny, that:

a. Proposition 215 (Health & Saf. Code, § 11362.5, except subd. (d)) and its implementing legislation (Health & Saf. Code, §§ 11362.7 - 11362.83) are preempted under the Supremacy Clause of the United States Constitution. (U.S. Const., art. VI, cl. 2.)

b. The STATE's medical marijuana laws - which declare that marijuana is an acceptable treatment for medical conditions - authorize its use, cultivation and possession for this purpose, and purport to immunize patients and caregivers from criminal prosecution. Proposition 215 (Health & Saf. Code, § 11362.5, except subd. (d)) and its implementing legislation (Health & Saf. Code, §§ 11362.7 - 11362.83) conflict with the federal Controlled Substances Act and the Single Convention on Narcotic Drugs and are therefore preempted.

c. The COUNTY and PENROD are not obligated to comply with the requirements of Proposition 215 (Health & Saf. Code, § 11362.5, except subd. (d)) and its implementing legislation (Health & Saf. Code, §§ 11362.7 - 11362.83) since they are in direct conflict with federal law.

22. Based on the foregoing, a clear, actual, and present controversy has arisen between the COUNTY and PENROD, and the STATE and SHEWRY, which controversy cannot be resolved without a judicial determination. Accordingly, COUNTY and PENROD seek the following judicial determinations:

a. Whether Proposition 215 (Health & Saf. Code, § 11362.5, except subd. (d)) and its implementing legislation (Health & Saf. Code, §§ 11362.7 - 11362.83)

are preempted under the Supremacy Clause of the United States Constitution; and, if so,

b. Whether the COUNTY and PENROD are obligated to comply with the requirements of California Health and Safety Code sections 11362.7 through 11362.83.

23. Such a declaration is necessary and appropriate at this time in that there is no adequate remedy at law, and in order for the COUNTY and PENROD to ascertain their rights and duties with respect to the apparent conflict between state and federal law.

PRAYER

WHEREFORE, the COUNTY and PENROD pray for judgment against defendants, and each of them, as follows:

1. Declaring that Proposition 215 (Health & Saf. Code, § 11362.5, except subd. (d)) and its implementing legislation (Health & Saf. Code, §§ 11362.7 - 11362.83) are preempted under the Supremacy Clause of the United States Constitution.

2. Declaring that the COUNTY has no obligation to comply with the requirements of California Health and Safety Code sections 11362.7 through 11362.83;

3. For costs of suit incurred herein; and

4. For such other and further relief as the Court deems just and proper.

DATED: 2/7/06 RONALD D. REITZ

157a

County Counsel

/s/

ALAN L. GREEN

Deputy County Counsel

Attorneys for Plaintiffs COUNTY
OF SAN BERNARDINO and
GARY PENROD

APPENDIX G

**SUPERIOR AND MUNICIPAL COURT OF
CALIFORNIA COUNTY OF SAN DIEGO**

**Case No. GIC 860665
(Consolidated WITH Case No. GIC861051)**

[Filed May 18, 2006]

COUNTY OF SAN DIEGO,

Plaintiffs,

vs.

STATE OF CALIFORNIA;

SANDRA SHEWRY, Director of the

California Department of Health

Services in her official capacity; and

DOES 1 through 50, inclusive,

Defendants.

COUNTY OF SAN BERNARDINO; and

GARY PENROD as Sheriff of the

COUNTY OF SAN BERNARDINO,

Plaintiffs,

vs.

STATE OF CALIFORNIA; SANDRA)
 SHEWRY, in her official capacity as)
 Director of California Department of)
 Health Services; and DOES)
 1 through 50, inclusive,)
)
 Defendants.)
 _____)

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 SAN BERNARDINO, and GARY PENROD

**OPPOSITION OF PLAINTIFFS COUNTY OF
 SAN BERNARDINO AND GARY PENROD TO
 DEMURRER OF DEFENDANTS STATE OF
 CALIFORNIA AND SANDRA SHEWRY, AND
 MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT THEREOF**

(Filed concurrently with Request for Judicial Notice)

Date: June 2, 2006
 Time: 2:30 p.m.
 Dept.: 64

Judge: William R. Nevitt, Jr.

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<i>Gonzales v. Raich</i> (2005) 545 U.S. 1 [125 S.Ct. 2195, __ L.Ed.2d__]	4, 5, 7
<i>Hines v. Davidowitz</i> (1941) 312 U.S. 52, [61 S.Ct. 399, 85 L.Ed. 581] ..	7
<i>Maryland v. Louisiana</i> (1981) 451 U.S. 725 [101 S.Ct. 2114, 68 L.Ed.2d 576]	7
<i>Maryland v. Wirtz</i> (1968) 392 U.S. 183 [88 S.Ct. 2017, 20 L.Ed.2d 1020]	7
<i>United States v. Oakland Cannabis Buyers' Cooperative</i> (2001) 532 U.S. 483 [121 S.Ct. 1711, 149 L.Ed.2d 722]	3, 4, 5
<i>Wickard v. Filburn</i> (1942) 317 U.S. 111 [63 S.Ct. 82, 87 L.Ed. 122] ..	5

California Cases*Burke v. City etc. of San Francisco*

(1968) 258 Cal.App.2d 32, 34 [65 Cal.Rptr. 539] . . . 9

*California Water & Telephone Co. v.**County of Los Angeles*

(1967) 253 Cal.App.2d 16 [61 Cal.Rptr. 618] 9

*Central Valley Chap. 7th Step Foundation v.**Younger*

(1979) 95 Cal.App.3d 21 2 [157 Cal.Rptr. 117] . . . 9

City of Santa Monica v. Stewart

(2005) 126 Cal.App.4th 43 [24 Cal.Rptr.3d 72] . . . 9

Consumer Cause, Inc. v. Johnson & Johnson

(2005) 132 Cal.App.4th 1175 [34 Cal.Rptr.3d 258] . . 8

*Farm Sanctuary, Inc. v. Department of**Food & Agriculture*

(1998) 63 Cal.App.4th 495 [74 Cal.Rptr.2d 75] . . . 9

Fenske v. Public Employee's Retirement System

(1980) 103 Cal.App.3d 590 [163 Cal.Rptr. 182] . . 13

Lockyer v. City and County of San Francisco

(2004) 33 Cal.4th 1055 [17 Cal.Rptr.3d 225] . . 12, 13

Pacific Legal Foundation v. California Costal Com.

(1982) 33 Cal.3d 158 [188 Cal.Rptr. 104] 8, 9

*Sanctity of Human Life Network v. California**Highway Patrol*

(2003) 105 Cal.App.4th 858, 872

[129 Cal.Rptr.2d 708] 9

Star-Kist Foods, Inc. v. County of Los Angeles
 (1986) 42 Cal.3d 1 [227 Cal.Rptr. 391] 13

Stocks v. City of Irvine
 (1981) 114 Cal.App.3d 520 [170 Cal.Rptr. 724] 9

Wilson v. Los Angeles County Civil Service Com.
 (1952) 112 Cal.App.2d 450 [246 P.2d 688] 8

Winter v. Gnaizda
 (1979) 90 Cal.App.3d 750 [152 Cal.Rptr. 700] 9

Zetterberg v. State Dept. of Public Health
 (1974) 43 Cal.App.3d 657 [118 Cal.Rptr. 100] 9

Federal Statutes

United States Constitution

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21 United States Code

Section 801 2, 5
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California Statutes

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**SUPERIOR AND MUNICIPAL COURT OF
CALIFORNIA COUNTY OF SAN DIEGO**

**Case No. GIC 860665
(Consolidated WITH Case No. GIC861051)**

[Filed May 18, 2006]

COUNTY OF SAN DIEGO,)

Plaintiffs,)

vs.)

STATE OF CALIFORNIA;)

SANDRA SHEWRY, Director of the)

California Department of Health)

Services in her official capacity; and)

DOES 1 through 50, inclusive,)

Defendants.)

COUNTY OF SAN BERNARDINO; and)

GARY PENROD as Sheriff of the)

COUNTY OF SAN BERNARDINO,)

Plaintiffs,)

vs.)

STATE OF CALIFORNIA; SANDRA)

SHEWRY, in her official capacity as)

Director of California Department of)

Health Services; and DOES)
1 through 50, inclusive,)
)
Defendants.)
)
)

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Attorneys for Plaintiffs COUNTY OF
SAN BERNARDINO, and GARY PENROD

**OPPOSITION OF PLAINTIFFS COUNTY OF
SAN BERNARDINO AND GARY PENROD TO
DEMURRER OF DEFENDANTS STATE OF
CALIFORNIA AND SANDRA SHEWRY, AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

(Filed concurrently with Request for Judicial Notice)

Date: June 2, 2006
Time: 2:30 p.m.
Dept.: 64
Judge: William R. Nevitt, Jr.

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

Plaintiffs COUNTY OF SAN BERNARDINO ("COUNTY") and GARY PENROD ("PENROD") submit the following opposition to the demurrer of Defendants STATE OF CALIFORNIA and SANDRA SHEWRY (collectively referred to as the "STATE):

I.

INTRODUCTION

The COUNTY and PENROD have sought to address an inconsistency in the law, which has significant impact on the day-to-day operations of law enforcement and local government. While the STATE has legalized the use and possession of marijuana for medical purposes under Proposition 215 and the Compassionate Care Act (Health & Saf. Code, § 11632.5, et seq.), under the federal Controlled Substances Act ("CSA; 21 U.S.C. § 801, et seq.), marijuana is a prohibited substance with no recognized medical uses. Yet, while the COUNTY and PENROD have chosen to address this problem through the only appropriate means available to them, the courts, the STATE contends that no actual controversy exists on which to seek judicial relief, and requests the action's dismissal on grounds that it is not ripe for adjudication.

As discussed below, the COUNTY and PENROD maintain that the legal ramifications of the conflict between state and federal law, and the violation of the Supremacy Clause of the U. S. Constitution, are ripe

for resolution. For this reason, the COUNTY and PENROD request the demurrer be overruled.

II.

STATEMENT OF THE CASE

Although the federal government has attempted to regulate marijuana since 1937, the current laws controlling the use and possession of that drug were enacted in 1970 with Congress' passage of the CSA. Title II of the CSA categorizes drugs into five "schedule" which are determined by the drugs' medical uses, potential for abuse, and affect on the mind and body. (21 U.S.C. § 812.) Under the CSA, marijuana is classified as a Schedule I drug, the most restrictive category, which makes it a criminal offense to manufacture, distribute, or possess. (21 U.S.C. §§ 823(f), 841(a)(1), and 844(a); see also *United States v. Oakland Cannabis Buyers' Cooperative* (2001) 532 U.S. 483, 490 [121 S.Ct. 1711, 149 L.Ed.2d 722].)

In November 1996, California voters passed Proposition 215, the Compassionate Care Act, legalizing the medical use of marijuana. The proposition exempted patients and their caregivers from the cultivation and/or possession of marijuana for personal use based on a physician's recommendation. The Compassionate Care Act was codified under the Health and Safety Code section 11362.5.

Under subsequent legislation known as the Medical Marijuana Program ("Program", Health & Saf. Code, § 11362.7, et seq.), a system has been established by the STATE in which qualified individuals may be given an identification card. Authorized possession of

such a card will exempt the holder from arrest and/or criminal prosecution for the cultivation or possession of limited amounts of marijuana. (Health & Saf. Code, §§ 11362.71(e); 11362.765(a).) The Program further allows that under certain circumstances authorized card holders incarcerated in a county jail may be permitted access to and use of medical marijuana. (Health & Saf. Code, § 11362.785.) Application of the Act also extends to parolees. (Health & Saf. Code, § 11362.795.)

Given the apparent conflict between California's medical marijuana laws and the federal CSA, challenges have inevitably arisen in the courts. Of those cases, the first to reach the U.S. Supreme Court was *United States v. Oakland Cannabis Buyers' Cooperative*, *supra*. The *Oakland Cannabis* case stemmed from an action filed in the U.S. District Court by the federal government to enjoin a non-profit cooperative from distributing marijuana for medical purposes. The district court denied the cooperative's motion to dismiss the complaint, and ultimately found the cooperative in contempt of the court's injunction. The cooperative appealed. On appeal to the Ninth Circuit, the district court's decision was reversed, and remanded with instructions for the court to consider medical necessity as an exemption to the CSA. The U.S. Supreme Court granted certiorari, and in May, 2001, overturned the Ninth Circuit holding that there is no implied exception for medical necessity under the CSA.

The U.S. Supreme Court next dealt with California's Compassionate Care Act in *Gonzales v. Raich* (2005) 545 U.S. 1 [125 S.Ct. 2195, __ L.Ed.2d __]. On June 6, 2005, the court released its opinion in the

Raich case holding that federal limitations on the manufacture, distribution, and possession of marijuana for medical purposes did not exceed the powers granted Congress under the Commerce Clause of the U.S. Constitution.

The *Raich* case involved an attempt by two women, qualified medical marijuana users, to enjoin enforcement of the CSA on grounds that Congress exceeded its authority under the Commerce Clause by attempting to regulate marijuana used for personal intrastate purposes. After the district court denied the plaintiffs' motion, the Ninth Circuit reversed the ruling on appeal, finding that the intrastate non-commercial cultivation and possession of marijuana for medical purposes recommended by a physician pursuant to a valid state law was in a class of local activities not covered by the Commerce Clause of the U.S. Constitution. On certiorari, the Supreme Court once again reversed the Ninth Circuit, finding that Congressional powers under the Commerce Clause did indeed extend to the purely local intrastate cultivation and use of marijuana for personal medical purposes:

In assessing the scope of Congress' authority under the Commerce Clause, we stress that the task before us is a modest one. We need not determine whether respondents' activities, taken in the aggregate, substantially affect interstate commerce in fact, but only whether a 'rational basis' exists for so concluding. (Citations omitted.) *Given the enforcement difficulties that attend distinguishing between marijuana cultivated locally and marijuana grown elsewhere, 21 U.S.C.*

§ 801(5), and concerns about diversion into illicit channels, we have no difficulty concluding that Congress had a rational basis for believing that failure to regulate the intrastate manufacture and possession of marijuana would leave a gaping hole in the CSA. Thus, as in *Wickard*¹, when it enacted comprehensive legislation to regulate the interstate market in a fungible commodity, Congress was acting well within its authority to “make all Laws which shall be necessary and proper” to “regulate Commerce ... among the several States.” U.S. Const., Art. I, § 8. That the regulation ensnares some purely intrastate activity is of no moment. As we have done many times before, we refuse to excise individual components of that larger scheme. (*Gonzales v. Raich*, *supra*, 125 S.Ct. at pp. 2208-2209; italics added.)

Significantly, as both the *Oakland Cannabis Buyers' Cooperative* and *Raich* cases dealt with injunctive relief, neither case directly confronted the constitutionality of California's medical marijuana laws. As of this date, that issue remains unresolved.

On February 8, 2006, the COUNTY and PENROD filed their complaint in the present action challenging the constitutionality of the STATE'S medical marijuana laws. The STATE has now demurred to that complaint on grounds that the issue is not ripe for adjudication as the COUNTY and PENROD have not

¹ *Wickard v. Filburn* (1912) 317 U.S. 111 [63 S.Ct. 82, 87 L.Ed. 122].

alleged an actual controversy. The COUNTY and PENROD oppose the STATE's demurrer on grounds that an actual controversy does exist. As alleged in the COUNTY's and PENROD's complaint, the plaintiffs face a present and ongoing issue concerning the return of seized marijuana. In fact, San Bernardino County courts have already ordered law enforcement agencies to return "medical marijuana" and/or growing equipment to criminal defendants. Likewise, seizures by COUNTY sheriff's deputies of cultivated marijuana plants have been challenged in court, and return of marijuana plants demanded by persons who have alleged medical need to possess and use them. Similarly the COUNTY and PENROD have faced government tort claims seeking damages for the COUNTY's seizure and destruction of alleged medical marijuana.

II.

ARGUMENT

A. CALIFORNIA LAW IS IN DIRECT CONFLICT WITH THE CSA.

While no court has yet found the Compassionate Care Act to be unconstitutional, the opinions of the U.S. Supreme Court in *Oakland Cannabis Buyers' Cooperative* and *Raich* clearly indicate that as long as Congress continues to classify marijuana as a Schedule I drug under the CSA, the STATE cannot create exceptions to the Act's enforcement - - even for approved medical purposes. Thus, a direct conflict exists between state law, which permits cultivation and possession of marijuana for medical uses, and federal law, which expressly prohibits those activities.

Given such a conflict, the federal law must ultimately prevail:

[S]tate law is pre-empted to the extent that it actually conflicts with federal law. ***Thus, the Court has found pre-emption where it is impossible for a private party to comply with both state and federal requirements,*** see, e.g., *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-143, 83 S.Ct. 1210, 1217-1218, 10 L.Ed.2d 248 (1963), or where state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.' *Hines v. Davidowitz*, 312 U.S. 52, 67, 61 S.Ct. 399, 404, 85 L.Ed. 581 (1941). See also *Maryland v. Louisiana*, 451 U.S. 725, 747, 101 S.Ct. 2114, 2129, 68 L.Ed.2d 576 (1981)." (*English v. General Elec. Co.* (1990) 496 U.S. 72, 79 [110 S.Ct. 2270, 110 L. Ed.2d 65]; italics added.)

Citing its prior decision in *Maryland v. Wirtz* (1968) 392 U.S. 183 [88 S.Ct. 2017, 20 L.Ed.2d 1020], the Raich court noted,

[L]imiting the activity to marijuana possession and cultivation 'in accordance with state law' cannot serve to place respondents' activities beyond congressional reach. ***The Supremacy Clause unambiguously provides that if there is any conflict between federal and state law, federal law shall prevail. It is beyond peradventure that federal power over commerce is "superior to that of the States to provide for the welfare or necessities of their inhabitants,"*** however

legitimate or dire those necessities may be.
 (Gonzales v. Raich, supra, 125 S.Ct., at p. 2212;
 italics added.)

Given the conflict with federal law, it would seem a foregone conclusion that the California's medical marijuana laws will not withstand constitutional scrutiny.

**B. THE COMPLAINT ALLEGES AN ACTUAL
 CONTROVERSY, AND IS THEREFORE
 "RIPE" FOR ADJUDICATION.**

With the questionable constitutionality of the STATE's medical marijuana laws, the question before the court with respect to the present lawsuit is whether it presents a claim "ripe" for adjudication:

Ripeness is another matter. "The ripeness requirement ... prevents courts from issuing purely advisory opinions. [Citation.] It is rooted in the fundamental concept that the proper role of the judiciary does not extend to the resolution of abstract differences of legal opinion the ripeness doctrine is primarily bottomed on the recognition that judicial decision-making is best conducted in the context of an actual set of facts so that the issues will be framed with sufficient definiteness to enable the court to make a decree finally disposing of the controversy." (*Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 170 [188 Cal.Rptr. 104].) "A judicial tribunal ordinarily may consider and determine only an existing controversy, and not a moot question or abstract proposition." (*Wilson v. Los Angeles County*

Civil Service Com. (1952) 112 Cal.App.2d 450, 452-453 [246 P.2d 688], citing 1 Corpus Juris Secundum, page 1012, Actions, section 17a.) (*Consumer Cause, Inc. v. Johnson & Johnson* (2005) 132 Cal.App.4th 1175, 1183 [34 Cal.Rptr.3d 258].)

Here, the STATE argues that "there is no concrete legal dispute between San Bernardino and the defendants that can be resolved without improper judicial speculation, and that San Bernardino will not suffer any harm if judicial consideration is withheld." (Demurrer, at p. 4.) At issue are the following allegations of the COUNTY's and PENROD's complaint:

The conflict between state and federal law which is presented in this lawsuit has direct personal implications for PENROD and his deputies as they are sworn to uphold the Constitution of the United States, as well as the Constitution of the STATE, and must enforce both state and federal drug laws. As Sheriff of the COUNTY, PENROD must deal with conflicting state and federal interests concerning the medical use of marijuana in determining whether to:

- a. Arrest persons observed to be in possession of a quantity of marijuana;
- b. Seize observed cultivated marijuana plants and quantities of marijuana;
- c. Allow authorized medical marijuana users who are confined as inmates in the COUNTY's detention centers access to medical marijuana while in COUNTY custody;

d. Oppose lawsuits seeking the return of medical marijuana seized by Sheriff's deputies and/or monetary damages for the loss of such marijuana;

e. Face exposure to liability, including punitive damages, under 42 United States Code section 1983 should he fail to grant authorized users access to medical marijuana; and

f. Return seized marijuana and marijuana plants to medical marijuana users upon order of a state court in direct violation of federal criminal law that categorizes marijuana as a Schedule I narcotic which is illegal to possess. (21 U.S.C. § 812.) (Complaint, par. 19.)

In analyzing the ripeness of a controversy for judicial determination, the courts have established a two tiered test. A dispute must be sufficiently concrete so that declaratory relief is appropriate, and the parties must suffer hardship if judicial consideration is withheld. (*Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 171 [188 Cal.Rptr. 104]; *Farm Sanctuary, Inc. v. Department of Food & Agriculture* (1998) 63 Cal.App.4th 495, 501-502 [74 Cal.Rptr.2d 75]; *City of Santa Monica v. Stewart* (2005) 126 Cal.App.4th 43, 63 [24 Cal.Rptr.3d 72].) However, in considering whether issues are ripe for review, account should also be taken of the public interest in a prompt answer to a particular legal question:

However, the ripeness doctrine is primarily bottomed on the recognition that judicial decision-making is best conducted in the context of an actual set of facts so that the issues will be framed with sufficient definiteness to enable the

court to make a decree finally disposing of the controversy. ***On the other hand, the requirement should not prevent courts from resolving concrete disputes if the consequence of a deferred decision will be lingering uncertainty in the law, especially when there is widespread public interest in the answer to a particular legal question.*** (*Stocks v. City of Irvine* (1981) 114 Cal.App.3d 520, 533 [170 Cal.Rptr. 724]; *Central Valley Chap. 7th Step Foundation v. Younger* (1979) 95 Cal.App.3d 212, 232 [157 Cal.Rptr. 117]; *California Water & Telephone Co. v. County of Los Angeles* (1967) 253 Cal.App.2d 16, 26 [61 Cal.Rptr. 6-18]; cf. *Winter v. Gnaizda* (1979) 90 Cal.App.3d 750, 756 [152 Cal.Rptr. 700]; *Zetterberg v. State Dept. of Public Health* (1974) 43 Cal.App.3d 657, 662 [118 Cal.Rptr. 100].) (*Pacific Legal Foundation v. California Coastal Com.*, *supra*, 33 Cal.3d at p. 171; italics added.)

Likewise, California courts have also ruled:

A plaintiff may bring an action for declaratory relief before an actual invasion of rights has occurred. (*Burke v. City etc. of San Francisco* (1968) 258 Cal App.2d 32, 34 [65 Cal.Rptr. 539].) However, the action must be based on an actual controversy with known parameters. If the parameters are as yet unknown, the controversy is not yet ripe for declaratory relief. (*Pacific Legal Foundation v. California Coastal Com.* 33 Cal.3d 158, 170-171 [188 Cal.Rptr. 104].) (*Sanctity of Human Life Network v. California Highway Patrol* (2003)

105 Cal.App.4th 858, 872 [129 Cal.Rptr.2d 708].)

In determining whether the present dispute is sufficiently concrete to make declaratory relief appropriate and satisfy the first tier of the ripeness test, the COUNTY and PENROD contend that the parameters of the dispute are defined and are known. As noted above, paragraph 19 of the complaint alleges a number of areas in which the conflict between state and federal marijuana laws impact the COUNTY and its law enforcement officers, such as PENROD, its Sheriff. Probably the most significant of these conflicts concerns enforcement.

The harm the COUNTY and PENROD will suffer, likewise, satisfies the second tier of the ripeness test, which is hardship in the absence of judicial consideration. Notwithstanding the STATE's argument that PENROD may have discretionary authority concerning the enforcement of federal law, the STATE attempts to minimize the true dilemma which the PENROD and his deputies face. The dilemma stems from the prohibited nature of marijuana. As long as marijuana is federal contraband, PENROD and his deputies are unquestionably committing and/or aiding and abetting a federal crime in returning seized marijuana to persons, regardless of whether the marijuana is intended for medical purposes, and even if acting under court order.

Furthermore, the STATE's claim that PENROD and his deputies do not enforce federal law overlooks the fact that COUNTY narcotics detectives assigned to the Sheriff's Department's Narcotics Division regularly

work side by side with federal law enforcement officers as part of the Sheriff's Department's Marijuana Eradication Team, the Methamphetamine Enforcement Team, the Campaign Against Marijuana Planting ("C.A.M.P.") Task Force (C.A.M.P. is a multi-agency task force managed by the STATE's Bureau of Narcotics Enforcement), the federal Drug Enforcement Administration's ("DEA") Street Narcotics Enforcement Team, the federal High Intensity Drug Trafficking Area ("HIDTA") Task Force (on which COUNTY Sheriff's deputies serve alongside California Highway Patrol Officers), the Inland Regional Narcotics Enforcement Team ("IRNET"), the Highway Interdiction Enforcement Team (composed of DEA, STATE, COUNTY and city law enforcement officers), and the Ontario International Airport Task Force (composed of DEA, Ontario Police Department, and COUNTY Sheriff's personnel) all of which enforce *both* state and federal marijuana laws. Further, some COUNTY Sheriff's deputies are cross-deputized as federal DEA agents. (See Declaration of Paul Cook attached to COUNTY's and PENROD's Request for Judicial Notice, pars. 2 and 3.)

In addition to the complications for enforcement, the conflict between the state and federal medical marijuana laws have resulted in the filing of motions and government tort claims against PENROD and the COUNTY's Sheriff's Department to return seized marijuana. Thus far, these motions have only failed because: 1) the deteriorated condition of the plants at the time that the motions were heard made it impossible to return the seized material, and/or 2) the existence of other operative facts indicated the confiscated marijuana was being used for other non-medical purposes. (See Declaration of Dennis

Tilton attached to COUNTY's and PENROD's Request for Judicial Notice, par. 2.) Furthermore, the COUNTY currently has pending at least two cases in which the disposition of growing equipment which was seized with allegedly medical marijuana is in question. (See Declaration of Dennis Tilton attached to COUNTY's and PENROD's Request for Judicial Notice, par. 3.)

In the future, similar challenges involving the seizure medical marijuana can be expected, but the transitory life of seized marijuana makes it highly unlikely that the present type of action could be filed and decided at a time where the plants still have medicinal value - at which point persons from whom the plants were seized will almost surely claim mootness pertaining to the principle issue now before this court, just as the STATE now claims the lack of ripeness.

C. THE COUNTY AND PENROD ARE SEEKING THE ONLY REMEDY AVAILABLE TO THEM TO ADDRESS THE CONFLICT BETWEEN STATE AND FEDERAL LAW.

The STATE's demurrer alleges that the COUNTY and PENROD are without authority to refuse to comply with state law. This mischaracterizes the case. The COUNTY and PENROD are not refusing to enforce the law, but rather, are challenging the law's constitutionality in the only way possible given the restraints of the California Constitution (Const., art. III, § 3.5) and *Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055 [17 Cal.Rptr.3d 225]. In this regard, the California Constitution provides that:

An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power: [¶]To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute (Const., art. III, § 3.5, subd. (c).)

Similarly, the *Lockyer* court held, independently of article III, section 3.5, that California law mandates that local officials, who are charged with the duty of enforcing a statute, do not possess the authority to disregard the terms of a statute in the absence of a judicial determination that it is unconstitutional. (*Lockyer*, *supra*, 33 Cal.4th, at pp. 1085-1086.)

What the STATE's argument misses, however, is that the COUNTY and PENROD are not refusing to enforce the STATE's medical marijuana laws, but instead are acting within the purview of both article III, section 3.5, and *Lockyer* in seeking judicial relief for their dilemma. In this respect, subsection (c) of article III, section 3.5, goes on to state that a statute cannot be declared unconstitutional by an administrative agency, "***unless an appellate court² has made a determination*** that the enforcement of such statute, is prohibited by federal law or federal regulations." (Const., art. III, § 3.5, subd. (c); italics added.)

² A superior court may likewise make a constitutional determination under article III, section 3.5. (*Fenske v. Public Employee's Retirement System* (1980) 103 Cal.App.3d 590, 595 [163 Cal.Rptr. 182].)

Furthermore, the present case stands in contrast to *Lockyer*, where the California Supreme Court noted:

Although it may be appropriate in some circumstances for a public entity or public official to refuse or decline to enforce a statute as a means of bringing the constitutionality of the statute before a court for judicial resolution, it is nonetheless clear that such an exception does not justify the actions of the local officials at issue in the present case. Here, there existed a clear and readily available means, other than the officials' wholesale defiance of the applicable statutes, to ensure that the constitutionality of the current marriage statutes would be decided by a court. (*Lockyer, supra*, 33 Cal.4th, at p. 1099.)

Here, the COUNTY and PENROD are neither defying the STATE, nor refusing to comply with state law. Their resort to the courts is the most appropriate means of addressing the conflicting duties they face. As the California Supreme Court has stated, "State action cannot be so insulated from scrutiny that encroachments on the federal government's constitutional powers go unredressed." (*Star-Kist Foods, Inc. v. County of Los Angeles* (1986) 42 Cal.3d 1, 9 [227 Cal.Rptr. 391].) There is no other clear and readily available means for COUNTY and PENROD to resolve these very serious and real-world conflicts between federal and state law.

III.

CONCLUSION

The COUNTY and PENROD disagree with the STATE's conclusion that the present action does not present a ripe controversy. Despite the STATE's claims to the contrary, the conflict between state and federal laws as they apply to medical marijuana presents a very real current enforcement problem for PENROD and his deputies. The conflict often places deputies assigned with federal officers to joint drug enforcement task forces in the ambiguous, if not confusing, position of not knowing whether to arrest authorized medical marijuana users, or seize quantities of allegedly medical marijuana. Likewise, as noted previously, only the deterioration of the marijuana, or the fact it was seized in addition to other contraband items, have *thus* far prevented PENROD from being forced to return seized marijuana to authorized medical users in contravention of federal law.

In recognition of the existing problems arising from the conflict, the COUNTY and PENROD have adopted the only practical method open to them of seeking the intervention of the courts.

For the reasons set forth above, the COUNTY and PENROD respectfully request that the court overrule the STATE's demurrer, and require the STATE to answer their complaint in the present action, or in the alternative, grant the COUNTY and PENROD leave to amend to cure any deficiencies which may be found to be present within their complaint.

184a

DATED: 5/18/06

DENNIS E. WAGNER
Interim County Counsel

/s/

ALAN L. GREEN
Deputy County Counsel
Attorneys for Plaintiffs
COUNTY OF SAN
BERNARDINO and GARY
PENROD

APPENDIX H

**SUPERIOR AND MUNICIPAL COURTS OF
CALIFORNIA, COUNTY OF SAN DIEGO**

**Consolidated Case No. GIC 860665
(Consolidated Case No. GIC 861051)**

[Filed May 18, 2006]

COUNTY OF SAN DIEGO,)
)
Plaintiffs,)
)
vs.)
)
STATE OF CALIFORNIA;)
SANDRA SHEWRY, Director of the)
California Department of Health)
Services in her official capacity; and)
DOES 1 through 50, inclusive,)
)
Defendants.)

COUNTY OF SAN BERNARDINO, and)
GARY PENROD as Sheriff of the)
COUNTY OF SAN BERNARDINO,)
)
Plaintiffs,)
)
vs.)
)
STATE OF CALIFORNIA; SANDRA)

SHEWRY, in her official capacity as)
 Director of California Department of)
 Health Services; and DOES)
 1 through 50, inclusive,)
)
 Defendants.)
)

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Attorneys for Plaintiffs COUNTY OF
 SAN BERNARDINO, and GARY PENROD

**REQUEST FOR JUDICIAL NOTICE OF
 PLAINTIFFS COUNTY OF SAN BERNARDINO
 AND GARY PENROD IN SUPPORT OF
 OPPOSITION TO DEMURRER OF
 DEFENDANTS STATE OF CALIFORNIA AND
 SANDRA SHEWRY, POINTS AND
 AUTHORITIES, AND DECLARATIONS OF
 DENNIS TILTON, RICK CASTANON, ALAN
 WESTERVELT, AND PAUL COOK IN
 SUPPORT THEREOF**

(Filed concurrently with Opposition to STATE's
 Demurrer)

Date: June 2, 2006

Time: 2:30 p.m.

Dept.: 64

Judge: William R. Nevitt, Jr.

TO DEFENDANTS STATE OF CALIFORNIA AND
SANDRA SHEWRY, AND TO HER ATTORNEY OF
RECORD:

PLEASE TAKE NOTICE that on June 2, 2006, at 2:30 p.m., or as soon thereafter as the matter may be heard in Department 64 of the above-entitled court located at 330 W. Broadway, San Diego, California, Plaintiffs COUNTY OF SAN BERNARDINO ("COUNTY") and GARY PENROD ("PENROD") shall request the court take judicial notice of certain facts in support of said plaintiffs' opposition to the demurrer of Defendants STATE OF CALIFORNIA and SANDRA SHEWRY (collectively referred to as the "STATE").

The COUNTY's request will be based on the grounds that the court may take judicial notice of court records and facts which are not reasonably subject to dispute pursuant to Evidence Code section 452, subdivisions (d) and (h), regarding prior claims and legal proceedings involving the COUNTY and PENROD and the seizure of medical marijuana and paraphernalia by Sheriff's deputies.

The COUNTY's and PENROD's request shall be further based on the attached points and authorities, the Declarations of Dennis Tilton, Rick Castanon, Alan Westervelt, and Paul Cook, and the attached exhibits, and the argument of counsel at the hearing of the

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STATE's demurrer to the COUNTY's and PENROD's complaint.

Dated: 5/18/06

DENNIS E. WAGNER
Interim County Counsel

/s/

ALAN L. GREEN
Deputy County Counsel
Attorneys for Plaintiffs
COUNTY OF SAN
BERNARDINO and
GARY PENROD

POINTS AND AUTHORITIES

I.

INTRODUCTION

The present request for judicial notice is filed in conjunction with the opposition of the COUNTY and PENROD to the STATE's demurrer, and requests that the Court take judicial notice of court records and certain facts not reasonably subject to dispute pursuant to Evidence Code section 452, subdivisions (d) and (h).

II.

JUDICIAL NOTICE MAY BE TAKEN IN CONJUNCTION WITH DEMURRERS

Code of Civil Procedure section 430.30 allows for demurrers to be based upon matters of which the court may take judicial notice.

When any ground for objection to a complaint . . . appears on the face thereof, or *from any matter of which the court is required to or may take judicial notice*, the objection on that ground may be taken by a demurrer to the pleading. (Code Civ. Proc., § 430.30, subd. (a).) (Emphasis added.)

Furthermore, Code of Civil Procedure section 430.70 specifically allows for judicial notice in conjunction with demurrers:

When the ground of demurrer is based on a matter of which the court may take judicial notice pursuant to Section 452 or 453 of the Evidence Code, such matter shall be specified in the demurrer, or in the supporting points and authorities for the purpose of invoking such notice, except as the court may otherwise permit. (Code Civ. Proc., § 430.70.)

Although demurrers are commonly considered to address only the defects appearing on the face of the complaint, there are several practical exceptions to that rule, one of which is that a complaint may be read as if it included matters judicially noticed:

The rule a demurrer lies only for defects appearing on the face of the complaint has several practical exceptions, one of which is that a complaint may be read as if it included matters judicially noticed (Code Civ. Proc., § 430.70). Thus the question becomes whether or not the question of "suicide" set forth in the death certificate and coroner's report was ***a fact subject to judicial notice under section 452 of the Evidence Code and may be utilized by the court in ruling on the demurrer.*** (*Bohrer v. San Diego County* (1980) 104 Cal.App.3d 155, 164 [163 Cal.Rptr. 419]; italics added.)

While judicial notice is most commonly used in support of demurrers, a broad reading of sections 430.30 and 430.70, and the apparent reasoning of the above-quoted language, would allow judicial notice to be used as a shield as well as a sword - at least to the extent of establishing the existence of additional facts which could be pled in an amended complaint. Thus

the COUNTY and PENROD urge that the “ripeness” grounds raised in the STATE’s demurrer are sufficient to invoke the doctrine under section 430.70, and allow the Court to take judicial notice of court records and certain indisputable facts in opposition to the STATE’s Demurrer.

III.

THE COURT MAY TAKE JUDICIAL NOTICE OF COURT RECORDS AND FACTS NOT-REASONABLY SUBJECT TO DISPUTE.

Evidence Code section 452 permits judicial notice under following circumstances:

Judicial notice may be taken of the following matters to the extent they are not embraced within Section 451: [¶] Records of (1) any court of this state or (2) any court of record of the United States or of any state of the United States. . . . [¶](h) Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy. (Evid. Code, § 452, subds. (d) and (h).)

In this case, the COUNTY and PENROD request that the Court take judicial notice of certain judicial and COUNTY records which are relevant to the pending demurrer, each of which satisfy the criteria for judicial notice set forth in Evidence Code section 452. In this regard, the courts have held that judicial notice may appropriately be taken of prior pleadings and records in conjunction with demurrers. (*Holding*

Co. v. O'Brien & Hicks, Inc. (App. 1 Dist. 1999) 75 Cal.App.4th 1310, 1313 [89 Cal.Rptr.2d 918]; *Carroll v. Puritan Leasing Co.* (1978) 77 Cal.App.3d 481, 486 [143 Cal.Rptr. 772].)

The COUNTY and PENROD further request the Court take judicial notice of certain facts not reasonably subject to dispute pursuant involving the participation of COUNTY Sheriff's deputies in joint task forces engaged in the enforcement of narcotics laws.

IV.

REQUESTS FOR JUDICIAL NOTICE

A. JUDICIAL NOTICE OF COURT RECORDS CONCERNING LITIGATION AND GOVERNMENT TORT CLAIMS ARISING FROM THE SEIZURE OF MEDICAL MARIJUANA.

The COUNTY and PENROD request that the court take judicial notice pursuant to Evidence Code section 452(d) of the following court records involving claims for the return of seized medical marijuana by law enforcement agencies within San Bernardino County:

- *People v. Timothy Joseph Weltz*, San Bernardino County Superior Court, Case No. FWV-10008 (See Exhibit "A" to attached Declaration of Dennis Tilton);
- *Paul Musso v. County of San Bernardino*, San Bernardino County Superior Court, Case No.

SSB 31231 (See Exhibit "B" to Tilton Declaration);

- *People v. Wayne Hobbs*, San Bernardino County Superior Court, Case No. (No Complaint Filed) (See Exhibit "C" to Tilton Declaration);
- *People v. Gary Ron Barrett*, San Bernardino County Superior Court, Case No. FVIO-10299 (See Exhibits "D" to Tilton Declaration);
- *Paul Musso v. County of San Bernardino*¹, San Bernardino County Small Claims Court, Case No. SSB 31231 (See Exhibits "E" and "F" to Declaration of Rick Castanon);

In addition to the above-referenced cases, the COUNTY also requests the court take judicial notice pursuant to Evidence Code section 452(h) of the following government tort claim:

- Claim of Larry Jay Nielson, San Bernardino County Division of Risk Management, Claim No. 0190-01-00547-01-40 (See Exhibit "G" to attached Declaration of Alan Westervelt).

¹ NOTE: This case follows on Mr. Musso's prior attempt to recover his medical marijuana in *Paul Musso v. County of San Bernardino*, San Bernardino County Superior Court, Case No. SSB 31231 (see Exhibit "C", above), and seeks recovery of damages against the COUNTY.

**B. JUDICIAL NOTICE OF THE PARTICIPATION
OF COUNTY SHERIFF'S DEPUTIES ON
JOINT NARCOTICS ENFORCEMENT TASK
FORCES.**

The COUNTY and PENROD further request pursuant to Evidence Code section 452(h) that the court take judicial notice of the fact that COUNTY Sheriff's personnel serve on task forces composed of personnel from a variety of federal, STATE, and local law enforcement agencies including:

- Methamphetamine Enforcement Team, the Campaign Against Marijuana Planting ("CAMP") Task Force: CAMP is a multi-agency task force managed by the STATE's Bureau of Narcotics Enforcement, and includes federal officers.
- Street Narcotics Enforcement Team of the federal Drug Enforcement Administration ("DEA").
- High Intensity Drug Trafficking Area ("HIDTA") Task Force: A task force on which COUNTY Sheriff's deputies serve alongside California Highway Patrol and federal officers;
- Inland Regional Narcotics Enforcement Team ("IRNET"): Another inter-agency task force on which COUNTY Sheriff's deputies serve alongside federal officers.
- Highway Interdiction Enforcement Team, composed of DEA, STATE, COUNTY and city law enforcement officers.

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- Ontario International Airport Task Force, composed of DEA, Ontario Police Department, and COUNTY Sheriff's personnel. (See Declaration of Paul Cook, par. 2.)

In addition to COUNTY Sheriff's personnel serving together with federal officers, there are also COUNTY Sheriff's deputies who are cross-deputized as federal narcotics officers. (Cook Declaration, par. 3.)

V.

CONCLUSION

For the reasons stated, the COUNTY and PENROD respectfully request that the court take judicial notice of the above-referenced cases and government tort claims concerning seized medical marijuana, as well as the fact COUNTY Sheriff's personnel are serving on joint task forces which engage in the seizure of medical marijuana.

DATED: 5/18/06

DENNIS E. WAGNER
Interim County Counsel

/s/
ALAN L. GREEN
Deputy County Counsel

Attorneys for Plaintiffs
COUNTY OF SAN
BERNARDINO and
GARY PENROD

DECLARATION OF DENNIS TILTON

I, Dennis Tilton, declare:

1. I am an attorney at law, duly licensed to practice law in the courts of the State of California. I am employed as a Deputy County Counsel and Sheriff's Legal Counsel by the COUNTY OF SAN BERNARDINO ("COUNTY"), a plaintiff in the present action. I make this declaration from personal knowledge and from a review of the records maintained by the COUNTY in the course of its business. If called as a witness, I can testify competently to the following facts.

2. My employment with the COUNTY requires me to provide legal services to the COUNTY's Sheriff, GARY PENROD ("PENROD"). I am, in fact, PENROD's primary legal advisor for the COUNTY's Sheriff's Department, and have continuously served in this capacity since January of 1992. My employment with the COUNTY periodically requires me to represent the Sheriff's Department in opposing motions for the return of seized marijuana which is allegedly used for medicinal purposes. My duties have also required me to obtain a general knowledge of pending cases in which the return of seized alleged medicinal marijuana has been requested. In this regard, I have identified the following cases in which San Bernardino County law enforcement agencies have been asked to return seized medical marijuana:

- *People v. Timothy Joseph Weltz*, San Bernardino County Superior Court Case No. FWV-10008 (see Exhibit "A" hereto, which is a true and correct copy of reporter's transcripts of court

proceedings regarding Mr. Weltz's request for the return of medical marijuana);

- *Paul Musso v. County of San Bernardino*, San Bernardino County Superior Court Case No. SSB 31231 (see Exhibit "B" hereto, which is a true and correct copy of the court's statement of decision regarding Mr. Musso's motion for the return of medical marijuana);
- *People v. Wayne Hobbs*, San Bernardino County Superior Court Case No. (No Complaint Filed) (see Exhibit "C" hereto, which is a true and correct copy of the court's Ruling on Motion to Return Seized Property); and
- *People v. Gary Ron Barrett*, San Bernardino County Superior Court Case No. FVIO-10299 (see Exhibit "D" hereto, which are true and correct copies of the court's on-line dockets and Mr. Barrett's written motion for the return of seized marijuana).

Thus far, the attempts to recover seized "medical marijuana" have failed only because:

1) the deteriorated physical condition of the plants at the time that the motions were heard made it impossible to return the seized material, and/or 2) the existence of other operative facts indicated the confiscated marijuana was being used for other, non-medicinal purposes.

3. declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

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4. Executed this 16th day of May, 2006, at San Bernardino, California.

/s/
DENNIS TILTON

DECLARATION OF RICK CASTANON

I, Rick Castanon, declare:

1. I am employed by the COUNTY OF SAN BERNARDINO ("COUNTY"), a defendant in the present action, as a Claims Representative II in the COUNTY's Division of Risk Management. I make this declaration from personal knowledge, and from a review of the records maintained by my office with respect to the claim of Paul Musso ("Musso"). If called as a witness, I can testify competently to the following facts.

2. I was the claims adjuster assigned to oversee Musso's claim for damages against the COUNTY. This claim arose from the seizure of Musso's medical marijuana by COUNTY Sheriff's deputies. In representing the COUNTY with regard to the Musso claim, I ultimately appeared in court, and successfully defended the COUNTY in the small claims action Musso filed to recover the lost value of his marijuana, *Paul Musso v. County of San Bernardino*, San Bernardino County Small Claims Court, Case No. SSB 31231. Attached hereto, and incorporated herein by this reference, are true and correct copies of the government tort claim (Exhibit "E") which Musso filed with the COUNTY, and a printout of the court's docket (Exhibit "F") pertaining to Musso's small claims action against the COUNTY.

3. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

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Executed this 17th day of May, 2006, at San Bernardino, California.

/s/
RICK CASTANON

DECLARATION OF ALAN WESTERVELT

I, Alan Westervelt, declare:

1. I am employed by the COUNTY OF SAN BERNARDINO ("COUNTY"), a defendant in the present action, as a Claims Representative I in the COUNTY's Division of Risk Management. I make this declaration from personal knowledge, and from a review of the records maintained by my office with respect to the claim of Larry Jay Nielson ("Neilson"). If called as a witness, I can testify competently to the following facts.

2. I am the claims adjuster assigned to oversee Nielson's claim against the COUNTY. Nielsen presented a claim for \$4,450 for the value of lost medical marijuana which had been seized by COUNTY Sheriff's deputies. Attached hereto as Exhibit "G" is a true and correct copy of the government tort claim which Neilson filed with the COUNTY.

3. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 17th day of May, 2006, at San Bernardino, California.

/s/

ALAN WESTERVELT

DECLARATION OF PAUL COOK

I, Paul Cook, declare:

1. I am a Deputy Chief of the Sheriff's Department of the COUNTY OF SAN BERNARDINO ("COUNTY"), a plaintiff in the present action. I make this declaration from personal knowledge and from a review of the records maintained by the Sheriff's Department in the regular course of its business. If called as a witness, I can testify competently to the following facts.

2. My duties at the Sheriff's Department have included service as the commander of the Department's Narcotics Division from December 1998 to October 2005. As a former commander of the Narcotics Division and as Deputy Chief, I am intimately familiar with the various task forces in which COUNTY sheriff's deputies work together with federal and other law enforcement officers concerning the enforcement narcotics laws. These task forces include:

- Methamphetamine Enforcement Team.
- The Campaign Against Marijuana Planting ("CAMP") Task Force: CAMP is a multi-agency task force managed by the STATE's Bureau of Narcotics Enforcement, and includes federal officers.
- Southern California Drug Task Force ("SCDTF") of the federal Drug Enforcement Administration ("DEA")

- High Intensity Drug Trafficking Area ("HIDTA") Task Force: A task force on which COUNTY Sheriff's deputies serve alongside California Highway Patrol and federal officers.
- Inland Regional Narcotics Enforcement Team ("IRNET"): Another inter-agency task force on which COUNTY Sheriff's deputies serve alongside federal officers.
- Highway Interdiction Enforcement Team, composed of DEA, STATE, COUNTY and city law enforcement officers.
- Cooperative Law Enforcement Agreement with the U.S. Department of Agriculture for narcotics enforcement on National Forest Service lands.
- Ontario International Airport Task Force, composed of DEA, Ontario Police Department, and COUNTY Sheriff's personnel.

These task forces regularly seize marijuana, and have seized marijuana which is claimed to be for medical use. (Attached hereto as Exhibits "H", "I", "J", "K", and "L" "M" are true and correct copies of agreements for joint narcotics task forces involving personnel from the COUNTY and federal government, including: CAMP (Exhibit "H"), SCDTF (Exhibit "I"), HIDTA (Exhibit "J"), IRNET (Exhibit "K"), DEA's Cannabis Eradication/Suppression Program (Exhibit "L"), and Cooperative Agreement with the U.S. Forest Service (Exhibit "M").)

3. In addition to the instances in which COUNTY Sheriff's deputies serve alongside federal law

enforcement officers on anti-narcotics task forces, there are also COUNTY Sheriff's deputies who have been and are currently cross-deputized as federal DEA agents.

4. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 16th day of May, 2006, at San Bernardino, California.

/s/
PAUL COOK

EXHIBIT A

**SUPERIOR COURT OF THE STATE OF
CALIFORNIA FOR THE COUNTY OF SAN
BERNARDINO WEST VALLEY DIVISION**

THE PEOPLE OF THE STATE)	
OF CALIFORNIA,)	
)
Plaintiff,)	
)
vs .)	Case No.
) FWV-16008
TIMOTHY JOSEPH WELTZ,)	
)
Defendant.)	
_____)	

ORAL PROCEEDINGS

**BEFORE HONORABLE
GERARD S. BROWN, JUDGE**

DEPARTMENT R-6

RANCHO CUCAMONGA, CALIFORNIA

MONDAY, FEBRUARY 22, 1999

APPEARANCES:

For the People:	DENNIS STOUT
	District Attorney
	By: ANNA CHOO
	Deputy District Attorney

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DENNIS TILTON
Deputy County Counsel

For the Defendant: THOMAS W. THORNBURG
Attorney at Law

Reported by: DEENA A. HERINGTON, CSR
Official Reporter, C-9826

EXHIBITS

EXHIBIT	FOR
Number	I.D.
	Page
1 - Dr. Bosserman's letter	8

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RANCHO CUCAMONGA, CALIFORNIA;
MONDAY, FEBRUARY 22, 1999

DEPARTMENT R-6 HON. GERARD S. BROWN,
JUDGE

APPEARANCES:

(THOMAS THORNBURG, Attorney at Law,
representing the Defendant; ANNA CHOO,
Deputy District Attorney for San Bernardino
County, representing the People of the State of
California; DENNIS TILTON, Deputy County
Counsel; (Deena A. Herington, C.S.R., Official
Reporter, C-9826.)

THE COURT: People versus Timothy Weltz. Counsel state appearances.

MS. CHOO: Anna Choo on behalf of the People.

MR. THORNBURG: Thomas Thornburg appearing on behalf of Defendant Timothy Weltz, your Honor, who is not present. I would like to explain to the Court that Mr. Weltz is presently at City of Hope Hospital being tested for receipt of a bone marrow transplant for the lymphatic cancer that he has at this time.

THE COURT: Very good.

MR. TILTON: Dennis Tilton, Deputy County Counsel for San Bernardino County Sheriff's Department that's currently holding seized marijuana plants and seized leaves.

THE COURT: Miss Choo, go ahead and

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proceed.

MS. CHOO: At this time the People move to dismiss FWV-16008 in the interest of justice pursuant to Penal Code Section 1385 and Health and Safety Code 11362.5.

THE COURT: Okay. The case is dismissed.

MR. THORNBURG: Yes, your Honor.

While the Court has jurisdiction I would like to make a motion for return of the property seized on

June 23rd, 1998, by the sheriff's department from Mr. Weltz and his home.

THE COURT: Okay.

MR. TILTON: Your Honor, San Bernardino County Sheriff's Department adamantly opposes that for the following reasons: Ordering the sheriff's department deputies to return the seized marijuana plants to the defendant would be tantamount to making the officers criminals by violating Title 21, Section 841(a) of the United States Code in distributing a federally prohibited controlled substance. The U.S. attorney's office and other federal agencies concurred with that view and there's language that indicates that in People V. Trippet, 1997 case, 56 Cal.App.4th 1532 at page 1548, footnote 12.

Additionally, the officers would be violating Health and Safety Code of California 11360(a), giving away or transporting marijuana, and there's language that would support that in

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People V. Ex Rel. Lungren V. Peron, 1997 case, 59 Cal.App.4th 1383, pages 1392 and 1399.

There's been nothing to show that what the defendant might need for pain for nausea relief could not be prescribed in pill form such as Marinol that contains Tetrahydrocannabinol (THC), which is the main intoxicating ingredients in marijuana and is an adequate alternative to marijuana, which is acknowledged in People V. Trippet at page 1539.

Here, additionally, there's been no evidence, although there's a letter from Linda Bosserman an M.D. that's been received, there's no evidence of a prescription or a physician's recommendation or approval prior to or even after the defendant's cultivation of marijuana or his arrest.

The U.S. Code 21 -- Title 21 U.S. Section 841 does not exempt distribution of marijuana to ill persons for medical uses on pages 1100 and 1101 of the United States V. Cannabis Cultivators Club, 1998, Northern District in California Case, 5 Fed.Supp.2d 1086, page 1094. So this case is thus more like People V. Rigo, 1999 case, 69 Cal.App.4th 409, where California Health and Safety Code Section 11362.5 was not found to apply retroactively.

The purpose of Proposition 215, the initiative that established medical marijuana use in some very limited instances, was to help seriously ill patients who act pursuant to doctor's recommendation or approval of

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marijuana use.

As the Rigo court said, growing large quantities of marijuana remains criminal, and that's in this case 17 pounds involved which is certainly a large quantity far beyond personal medical use. Neither California Health and Safety Code Section 11362.5 or any other legal authority mentions returning any seized marijuana, which is another point that would be like a case of first impression if it would be returned.

The Compassionate Use Act of 1969 merely provides a defense to what otherwise would be a crime of possessing or cultivating marijuana, and that's supported by People V. Ex Rel. Lungren V. Peron page 1400 and People V. Trippet at page 1546. And also in this case we have a compounded event by the presence of tape-recorded evidence that the sheriff's department is holding in another case.

MR. THORNBURG: I would object to any reference to another case being made in this matter, your Honor, as irrelevant.

THE COURT: Overruled.

Go ahead.

MR. TILTON: I know it's alleged, your Honor, but we allegedly have a tape that relates to an ongoing case that on September 7th, 1998, the defendant offered to sell morphine to an undercover sheriff's detective and is so charged, so he cannot be trusted not to sell any marijuana returned to him. I think it's also

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noteworthy that occurred on September 7th, 1998, and he was -- had the marijuana plants seized in and was arrested for that cultivating marijuana offense on June 23rd, 1998, so this occurred after he already was picked up on the marijuana offense.

17 pounds is far beyond what a person would need for medical use as noted in People V. Trippett. Even Proposition 215 proponent Terence Hallinan has said in the valid rebuttal for that proposition that police

officers can still arrest anyone who grows too much or tries to sell it. One pound -- it was noted in People V. Trippet on page 1547, footnote 9, one pound marijuana yields 250 to 450 joints, so there's a weight too large an amount in any event.

Defense counsel orally conceded to me Friday in a conversation over the telephone that the seized marijuana in issue was taken at a time that it cannot presently be used to satisfy any medical purpose.

Mr. Thornburg admitted that it will not create any euphoria or provide any analgesic effect or to any effect to help with nausea because it was yanked before it matured.

So taking into account all those different reasons, your Honor, and the fact that there's no law to even allow for returning back marijuana in the seed plant or leaf form, we would ask the Court to totally deny that motion.

THE COURT: Mr. Thornburg, anything else?

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MR. THORNBURG: Yes, your Honor, very briefly. First of all, there's a reference to 17 pounds. It's my understanding that this was roots, stalks, and had absolutely nothing to do with 17 pounds of usable medicine for Mr. Weltz. The -- I do feel that the hearsay statements regarding the allegation of a sale of another controlled substance is not applicable here.

I did say that in my view I did not believe that this substance seized had THC in it at that point that

would be sufficient for any medical use. I unfortunately am not a doctor of medicine. My doctorate is in the field of law, and so I cannot and did not intend to stipulate with county counsel that this was not usable in its present form, and that was not a stipulation I was either authorized to or qualified to enter into.

I do believe that under the Constitution of the United States that when property is seized from somebody's home with or without a warrant and the case has been dismissed, that this Court is obligated to order the return of that profit in the criminal matter; that there is no reason nor justification for this Court authorizing somebody to retain profit taken that I do not believe was taken in a constitutional manner. I believe that if there's any further litigation on this and if the sheriff's department through their counsel believe that they should be able to retain it, that they have the right to do so, and Mr. Weltz then has the right to attempt to recover it from them in a separate action, but I believe

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that this Court is or at least should be obligated to order the return of all property seized.

THE COURT: Okay. The Court's ruling is going to be as follows: Under Health and Safety 11362.5, the patient would have a right to possess or cultivate the marijuana for personal medical purposes upon the written or oral recommendation or approval of a physician. In this particular case, I've read the letter of August 21st, 1998, from Dr. Linda Bosserman and nowhere in that letter or in any other document or oral

representation that's been made to me, has there been what I consider to be a written or oral recommendation or approval by a physician.

Inasmuch as that is the case, the Court is not going to return to the defendant, Mr. Weltz, items of contraband for which he has no legal right to possess.

The issue concerning what the federal authorities may do is an issue we will save for another day because we don't need to address that issue. It would be certainly something we would address if, in fact, there was permission by a physician or approval to use the marijuana for additional purposes, but inasmuch as that permission doesn't exist the Court is not going to essentially create a violation of the Health and Safety Code by providing this marijuana, be it the plants pulled out or the seeds, when in fact his possession would be against the Health and Safety code.

The Court is going to make its ruling

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without prejudice if, in fact, Mr. Weltz is able to get some sort of approval. Obviously this would only apply to the seeds because the plants are of no further use to him, then the Court will consider that at a later time. However, the Court would obviously need to look at P & A's that address the applicability of the federal statutes to this as well before making a decision.

MR. THORNBURG: Thank you, your Honor. I would suggest I have the original copy from Dr. Bosserman. That is not in the Court's file. I would

think that it would be appropriate to put this in the file so that –

MR. TILTON: I think we could mark it as an exhibit.

THE COURT: We'll make it Exhibit 1.

MR. THORNBURG: Could we make a copy of that for this purpose?

THE COURT: Yes, we will do that.

MS. CHOO: There's one other matter. The misdemeanor, MWV-046136, was trailing the felony that was dismissed today.

THE COURT: Yes.

MS. CHOO: Could we have that misdemeanor now trail the pending felony case in Department A on Wednesday.

THE COURT: We'll do that. I assume we have no time problem on the misdemeanor.

MS. CHOO: I believe Mr. Weltz entered a

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general time waiver.

THE COURT: Yes, he did.

We'll have the misdemeanor trail the felony in Department A.

MR. THORNBURG: Thank you.

THE COURT: Thank you, counsel.

(The proceedings were concluded.)

STATE OF CALIFORNIA)
) SS.
COUNTY OF SAN BERNARDINO)

I, DEENA A. HERINGTON, certified shorthand reporter of the above-entitled court, do hereby certify:

That I am a certified shorthand reporter of the State of California, duly licensed to practice; that I did report in stenotype oral proceedings had upon hearing of the aforementioned cause at the time and place herein before set forth; that the foregoing pages numbered 1 through 9, inclusive, constitute to the best of my knowledge and belief a full, true, and correct transcription from my said shorthand notes so taken for the date of February 22, 1999.

Dated at San Bernardino, California, this 24th day of May, 1999.

/s/
DEENA A. HERINGTON, CSR NO. 9826

EXHIBIT B

SUPERIOR COURT

COUNTY OF SAN BERNARDINO

351 North Arrowhead Avenue, Department S7
San Bernardino, California 92415-0240

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO**

Case No.: SSB 31231

[Filed April 10, 2003]

PAUL MUSSO,)
)
Plaintiff,)
)
vs.)
SAN BERNARDINO COUNTY)
SHERIFF GARY PENROD,)
)
Defendant.)
_____)

STATEMENT OF DECISION

This case involves a claim by the plaintiff against the defendant in the amount of \$5,000.00 for the value of marijuana plants that were seized by an agent of the defendant. The defendant denies any liability.

The evidence indicates that on or about September 14, 2001, the plaintiff was growing marijuana plants on his property. On that date, a burglar alarm went off and in response thereto, a deputy of the defendant

entered the plaintiff's property. He discovered 13 plants and seized them.

The plaintiff claims that he was permitted pursuant to the provisions of Health and Safety Code Section 11362.5 to grow marijuana for medicinal purposes. The plaintiff offered into evidence a written recommendation from his physician that he use marijuana for medicinal purposes (i.e. Exhibits 1, 2 and 3). He therefore satisfied his burden of establishing an affirmative defense based on the language of Health and Safety Code § 11362.5).

Even though the plaintiffs possession of the marijuana plants was legal, the seizure of same by the defendant's deputy was also legal. Under federal law (i.e. 21 USC §841(a), the defendant and his agents are prohibited from returning the seized marijuana to the plaintiff. This court lacks jurisdiction to order the defendant to return the plants to the plaintiff. Therefore the plaintiff has not suffered any damages by virtue of the degradation of the plants while in the custody of the defendant. Therefore the plaintiff has no cognizable claim for monetary damages under the facts of this case.

The parties are directed to immediately contact the courtroom clerk in Department S7 at (909) 387-4793 to make arrangements to retrieve their respective trial exhibits. If the exhibits are not picked up, they will simply be discarded.

Dated this 10th day of April, 2003.

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/s/

JUDGE KENNETH ZIEBARTH

Judge of the Superior Court, retired

EXHIBIT C

Superior Court
14455 Civic Drive
Victorville, CA 92392

**SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF
SAN BERNARDINO**

Case No.: No Complaint Filed

[Filed January 4, 2001]

The People of the State of California,)
)
Plaintiff,)
Vs.)
)
Wayne Hobbs,)
)
Defendant.)
)

Ruling on Motion to Return Seized Property

This matter came on regularly for hearing on December 8, 2000. The Court having taken the matter under submission rules as follows.

1. On July 1, 2000, deputies of the San Bernardino County Sheriff's Department, while answering a burglar alarm call at Mr. Wayne Hobbs' residence, observed numerous marijuana plants and growing equipment. Mr. Hobbs, who is a quadriplegic, presented the investigating officers with letters,

purporting to be from his physician, [redacted] recommended and authorized him to possess and cultivate marijuana for his personal medical use. The deputies consulted with narcotics investigators and were advised that the amount of marijuana under cultivation was inconsistent with the claim of personal use. Mr. Hobbs had admitted during a previous contact with deputies that he was a "co-op grower" and grew marijuana for other "medical marijuana use patients." The deputies seized 90 seedlings and 72 large marijuana plants. The plants ranged in size from five inches to five feet. They also found hash oil and a small quantity of methamphetamine. Mr. Hobbs denied knowledge of the latter. In addition, they seized vapor lights, an automatic watering system, pumps, plant food, and marijuana paraphernalia. The cultivation equipment and plants were located in a hidden grow room. Mr. Hobbs was arrested for illegal cultivation of marijuana, but was allowed to remain in his home due to his medical condition. The District Attorney subsequently declined to prosecute Mr. Hobbs. The Sheriff's Department returned the non-contraband property but refused to return the marijuana.

2. The Court of Appeal, in *People v. Mower* (2000) 85 Cal. App. 4th 290, ruled that Health and Safety Code Section 11362.5 does not immunize one who purports to possess marijuana for personal medical use from arrest and prosecution for violations of Health and Safety Code Sections 11357 and 11358, but only authorizes an affirmative defense. The burden is on a defendant to present sufficient evidence at trial to establish that the defendant's cultivation, possession and use come within the exception of 11362.5. That section likewise does not prohibit the seizure of

marijuana claimed to be possessed for personal medical use.

3. Possession of marijuana is presumptively a crime. Investigating officers are not obliged to accept representations by a suspect that marijuana is being cultivated and possessed for personal medical use only. When investigating violations of Health and Safety Code Sections 11357 and 11358, as in the investigation of any crime (e.g. a battery possibly committed in self defense), officers presumably will determine from the totality of the circumstances presented whether an offense has been committed and whether a valid defense exists which negates the suspected crime. However, if officers have probable cause to believe that a suspect is cultivating or possessing marijuana, the fact that there may exist some evidence tending to show that the marijuana was possessed for personal medical use does not make the arrest and seizure of the contraband unlawful.

4. The facts presented at the hearing demonstrated that probable cause existed for the deputies to believe that M. Hobbs was cultivating marijuana for other than personal use. Mr. Hobbs was operating a sophisticated "grow room", was cultivating numerous plants, and had previously admitted that he was furnishing marijuana to other medical marijuana use patients without any suggestion that he was "primary caregiver" of another patient, as is required by Health & Safety Code Section 11362.5. Such conduct does not fall within the exception contained in that section. (See, *People ex rel. Lungren v. Peron* (1997), 59 Cal. App. 4th 383.)

5. Health & Safety Code Section 11362.5 does not directly address the issue of the return of marijuana that has been seized as evidence, but is not needed as evidence in a pending or anticipated criminal prosecution, and is alleged to have been lawful possessed under that statute. However, the statute does recite the following purpose and intent.

(b)(1) The people of the State of California hereby find and declare that the purposes of the Compassionate Use Act of 1996 are as follows:

(A) To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.

6. Based upon the above quoted language and the Court's general authority to control the disposition of property seized for possible criminal prosecution, (*Gershenhorn v. Superior Court* (1964) 227 Cal. App 2d 361, 366; cf. *Oziel v. Superior Court* (1990) 223 Cal. App. 3d 1284, 1293), the court finds that it has jurisdiction to entertain this motion.

7. Because marijuana is presumptively illegal contraband, Mr. Hobbs bore the burden of proving facts necessary to establish that the marijuana was lawfully possessed within the exception provided by Health & Safety Code Section 11362.5. He was required

to prove this by a preponderance of the evidence. The fact that the District Attorney's Office, exercising its prosecutorial discretion, declined to prosecute Mr. Hobbs does not establish that the marijuana was lawfully possessed by Mr. Hobbs for personal medical use for purposes of this motion.

8. The evidence presented did establish that Mr. Hobbs suffers from one or more of the specified medical conditions, and that he had the prior recommendation and approval of a physician for medical use of marijuana, as required by Health & Safety Code Section 11362.5 (b)(1)(A). However, Mr. Hobbs failed to prove that he was cultivated and possessed marijuana solely for his own personal medical use. On the facts presented, the Court cannot find that the Marijuana in question was lawfully cultivated and possessed within the exception of Health & Safety Code Section 11362.5. Accordingly, the motion to return the marijuana is denied.

9. Because the court has denied the motion it need not reach the issue of the apparent conflict between California's drug enforcement laws and those of the Federal Government and the effect which that apparent conflict might have on the Court's authority to order the return of marijuana in an appropriate case.

Dated: January 4, 2001

/s/

Judge Jules E. Fleuret
Superior Court Judge

EXHIBIT D**Minutes**

Home	Def.	Def.	Charges
	Status	Info	
Actions	Minutes	Probation	Case Report
Fine			
Info			

Defendant 1 - BARRETT, GARY RON Of 2

Action: HEARING ON REVOCATION OF
PROBATION - 05/09/2003

**Case FVI010299 Defendant 106755 BARRETT,
GARY RON**

Action: HEARING ON REVOCATION OF
PROBATION

Date: 05/09/2003

Time: 9:30 AM

Division: V4

Hearing Status: DISPOSED

STEPHEN H ASHWORTH
CLERK LUCY SCHNEIDER
REPORTER STACI MORAN
DEPUTY DISTRICT ATTORNEY JAY HOSKINGS
PRESENT.
ATTORNEY DANIEL HALPERN PRESENT.
DEFENDANT PRESENT.

PROCEEDINGS

225a

COURT FINDS NEW MATTER IS BASIS OF THIS
PETITION AND DISMISSES THIS PETITION
COURT ORDERS PROBATION TO CONTINUE ON
SAME TERMS AND CONDITIONS.

PROBATION ORDERED TERMINATED ON
10/17/2003.

(ORIGINAL TERMINATION DATE)

-

COURT ORDERS ALL PROPERTY EXCEPT FOR
MARIJUANA RETURNED/ATTY HALPERN TO
PROVIDE ORDER FOR COURT SIGNATURE
CUSTODY STATUS

CASE CUSTODY - PROBATION.

PROBATION OFFICE NOTIFIED.

CASE CLOSED.

===== MINUTE ORDER END =====

CASE CLOSED.

226a

Minutes

Home	Def.	Def.	Charges
	Status	Info	
Actions	Minutes	Probation	Case Report
Fine			
Info			

Defendant 1 - BARRETT, GARY RON Of 2

Action: MOTION RE: RETURN OF PROPERTY -
12/20/2002

**Case FVI010299 Defendant 106755 BARRETT,
GARY RON**

Action: MOTION RE: RETURN OF PROPERTY

Date: 12/20/2002

Time: 8:32 AM

Division: V4

Hearing Status: DISPOSED

STEPHEN H ASHWORTH
CLERK LUCY SCHNEIDER
REPORTER TRACY GRAHAM
DEPUTY DISTRICT ATTORNEY JAMES HOSKING
PRESENT.
ATTORNEY DANIEL HALPERN PRESENT.
DEFENDANT PRESENT.

PROCEEDINGS

DEFENDANT WAIVES ARRAIGNMENT ON
PETITION FOR REVOCATION OF PROBATION.
DEFENDANT DENIES ALLEGATION(S) IN
PETITION FOR REVOCATION OF PROBATION.

COURT ORDERS PROBATION REVOKED.

-

DEFENSE MOTION FOR ORDER REGARDING
PROPERTY IS GRANTED.

COURT ORDERS PROPERTY SHALL BE
RETAINED BY SHERIFFS DEPARTMENT AND
NOT DESTROYED/IN ANY EFFORT BY SHERIFFS
DEPARTMENT TO DESTROY PROPERT DEFENSE
SHALL BE GIVEN 10 DAYS ADVANCE NOTICE
DEFENSE SHALL PREPARE ORDER FOR COURTS
SIGNATURE HEARINGS

HEARING ON PETITION REVOKING PROBATION
SET FOR 12/31/2002 AT 8:30 IN DEPT. V6. CASE TO
TRAIL CASE FVI016264.

DEFENDANT ORDERED TO APPEAR ON HEARING
DATE.

-

CUSTODY STATUS

CASE CUSTODY - OR

PROBATION OFFICE NOTIFIED.

===== MINUTE ORDER END =====

Gary Barrett
Anna Barrett
National Trails Highway
Barstow, CA 92311
760-253-9808

San Bernardino Trial Courts
Desert Division
State of California

Case No. : FVI 010299

People of the State of California,)
)
Plaintiff,)
)
vs.)
)
Gary Barrett, Anna Barrett,)
)
Defendant)
_____)

MOTION TO RETURN PROPERTY

PLEASE TAKE NOTICE that on 11/15/02, at the hour of 8:30am or soon thereafter as counsel may be heard in the courtroom of Division V4 of the above entitled court, the defendant will move for an order to return property seized from defendant's residence at 14266 City View Ct, Victorville, CA on 10-25-02, by members of the San Bernardino Sheriff's Department, the property sought to be returned is as follows:

47 outdoor marijuana plants, 87 un-rooted marijuana
clone attempts
Digital scale
Ziploc baggies
All marijuana from residence
All documents relevant to VCVVS 024892

This motion will be made on the grounds that the items seized are not necessary to establish the truth of the charges against the defendant, are not property the possession of which is prohibited by law and do not need to be retained for any investigative or other lawful purposes.

This motion will be based on this notice of motion, on the attached declaration and memorandum of points and authorities served and filed herewith, on such supplemental memoranda of points and authorities as may be filed with the court or stated orally at the conclusion of the hearing on the motion, on all the papers and records on file in this action, and on such oral and documentary evidence as may be presented at the hearing of the motion.

STATEMENT OF FACTS

FOR THE RECORD, CONSTRUCTIVE NOTICE, ESTABLISHING INTENT, My wife and self are PEOPLE OF THE STATE OF CALIFORNIA, and reside in the REPUBLIC OF THE STATE OF CALIFORNIA, and in the COUNTY OF SAN BERNARDINO, Our actions in this case do not constitute an attempt to commit a crime.

The Sheriff's Department offers the following on its web site. Peace in a free society depends on

voluntary compliance with the law; (continuing)
When it becomes necessary to rely on law enforcement action to secure compliance with the law, society has failed in this responsibility.

The incidence of absence of implementing policy and outright violation by criminal justice entities demands enforcement and compliance with California law.

This motion is brought of medical necessity and meets the six points of necessity.

This motion seeks return of property or in the event it's condition not suitable for return, restoration of equitable relief.

I.

In July, 2000, Mr. and Mrs. Barrett entered into a plea agreement with the Court. Based on Federal guidelines for patients receiving marijuana from the Federal Government in IND (Investigational New Drugs) compassionate use studies, an amount of 7.1 lbs. each per year was constructed into #9(c) of the plea agreement. Item 11 describes the additional information as immunity, and the Barrett's fully understood the arrangement to protect them from additional loss. In Oct. 2000 the Barrett's were sentenced to 36 mos. probation with the marijuana agreement binding, and requested that probation be modified to include a more legible copy of the specified information.

II.

On 3-14-02, a modification was made to the probation terms and conditions, while Mr. Silva [CSBN: 176793] who was representing the Barrett's explained to them that the rights granted by the plea agreement remained unchanged.

III.

At no time have the Barrett's attempted to in any way press the outward allowance envelope of the specified amount. In fact the cumulative yield of actual usable cannabis the Barrett's have produced since the agreement is accurate as follows:

10/18/00-10/17/01 1 ½ lb. total for both.

[534 plants destroyed – 34 adult flowering est. yield not more than 8 lbs.]

10/18/01-10/17/02 1 ½ lb total for both.

IV.

The Barrett's are qualified to possess the items seized. "I fear for the safety of my wife when we are forced, by this absence of policy to procure medicinal grade cannabis from illicit sources, she's been beaten by street dealers."

V.

Therefore:

Complying with CA H&S § 11362.5 (d):

Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician. Total amount of plants and usable cannabis is within the plant counts, and yield amounts determined appropriate for each Mr. and Mrs. Barrett's personal use in plea agreement in FVI 010299.

VI.

Credibility of the officers true motives is in question due the repeated references to move 'north' and 'change your zip code', and the specific removal of documents pertinent to VCVVS 024892, a civil case currently in MSC stages.

Additional comments made by R. Ciolli made clear that he was not answerable to the court. Their denial of medical marijuana is likable to a hate crime where officers acting under color of law ignore CA Constitution Article 3 Section 3.5. This Rosemary's Baby Coven of law enforcement practice makes clear that rape is an act of power and not sex.

VII.

Negligent care could have destroyed the thrive of the living plants, and the Barrett's pray for equitable relief in the event of damage. The live material unless properly maintained will die. Each strain has individual qualities the others do not share, the replacement value of time to produce healthy mother

plants should also be considered. There were over 20 varieties.

VIII.

The County of San Bernardino has written Gary Barrett a prescription for Marinol at a cost of \$600/week.

AUTHORITIES

The fifth amendment to the Constitution of the United States guarantees that no person shall be deprived of property without due process of law. Said amendment is applicable to the states under the Fourteenth Amendment of the Constitution. Article I, Section 15 of the California Constitution contains a similar injunction.

The State can not seize the property from an individual and then put the individual to the burden of justifying its return. Such is not due process of law (*see, e. g., Evidence Code §637*). A Defendant in a criminal action cannot be forced to pursue civil remedies to obtain the return of property which is not contraband and unclaimed by anyone else. *People v. Superior Court (Loar)*, 28 Cal.App. 3d 600.

If the nature of the property is in question a hearing must be held to determine if it is contraband, and to determine if this meets the definition of preclusion. The People have the burden of proof at such a hearing and must show by preponderance of the evidence that the property is contraband. *People v. Superior Court (McGraw)*, 100 Cal.App 3d

1085; see also *Greshorn v Superior Court*, 227 Cal.App. 2d 361. This is true even after a criminal action has been completed. *Loar, supra*, 28 Cal/App. 3d at p. 608.

[*People v Superior Court (Acquinio)* (1988, 1st district) 201 Cal App 3d 1346, 248 Cal Rptr 50]

[*People v Holland* (1978) 23 Cal 3d 77, 151 Cal Rptr 625, 588 P2d 765]

[*Espinosa v Superior Court of San Joaquine County* (1975 3rd Dist) 50 Cal App 3d 347, 123 Cal Rptr 876]

[*People v Superior Court of Orange County* (1972, 4th Dist) 28 Cal App 3d 600, 104 Cal Rptr 448]

Buker v Superior court of San Diego County (1972, 4th Dist) 25 Cal App 3d 1085, 102 Cal Rptr 494]

Absent a showing by the prosecution that the property seized from the Defendants and sought to be returned to the Defendants is contraband or is claimed by someone with a proved, supervising claim, and that the claim does not preclude the Defendants from those items in equity, the property must be returned to the Defendants.

Respectfully submitted,
/s/

Dated this 29th day of October, 2002

ORDER

After the argument of counsel and for good cause shown, IT IS HEREBY ORDERED that the following

\

property be returned to Gary Barrett, and Anna Barrett.

1. 47 outdoor marijuana plants, 87 un-rooted marijuana clone attempts
2. Digital Scale
3. Ziploc baggies
4. All marijuana from residence
5. All documents
6. Equitable relief in the amount of: \$_____

Dated: _____

JUDGE OF THE SUPERIOR COURT

236a

EXHIBIT E

**CLAIM AGAINST
COUNTY OF SAN BERNARDINO**

[No previous]

Date March 12, 2002

TO: Risk Management Division
County of San Bernardino
222 Hospitality Lane, 3rd Fl.
San Bernardino, CA 92415-0016

Claim is hereby made against the treasury of the
County of San Bernardino, State of California, as
follows:

Less than \$10,000 – State the total amount claimed
\$ _____

More than \$10,000 – Check one of the boxes:

Municipal Court Jurisdiction (\$10,000 -
\$25,000) ☐

Superior Court Jurisdiction (\$25,001 and up)
☒

Claimant makes the following statements in support
of the claim:

1. Name of Claimant: Paul Musso
First Middle Last

237a

310-350-7177

(Area Code and Phone No.)

2. Address of Claimant: 17572 Greenwood Ct.
Street

Devore, 92407

City Zip Code

3. Notice concerning claim should be sent to:
Law Office of Allen G. Weinberg Allen G.
Weinberg
Name

9454 Wilshire Blvd Suite 600 Beverlyhills
Address Zip Code

310-550-7177

(Area Code and Phone No.)

4. Circumstances giving rise to claim are as follows:
Sept. 14th, 2001 unknown time. Unknown San
Bernardino County Sheriff Department employees
entered claimants property and removed 13
(thirteen) marijuana plants for which claimant
cultivated for his personal medical use. Claimant
had proper medical authoritzation as required
under IHealth and Safety Code. Notice of medical
use was posted on plants.
5. Date, Time and Place (city, street, cross-street)
damage occurred and nature thereof: Sept. 14th
2001 unknown time. 17572 Greenwood Ct. Devore
CA. 92407. Raid by Sherif Department siezing
marijuana plants possessed for medical purposes.
Reference file # 010103677

6. Public property and/or public officers or employees causing injury, damage or loss: Unknown employees of San Bernardino County Sheriff Department. Reference file # 010103677
7. Name, address and telephone number of witnesses: Paul Musso 17572 Greenwood Ct. Devore, CA. 92407 Contact via attorney 310-550-7177
8. Basis of computation of claimed amount is as follows:

Medical expense to date Approximately \$4500.00

Estimated future medical expenses \$720.00 per month

Other expenses _____

Other damages _____

Lost wages _____

General damages Excess of \$25000.00

Property damage Approximately \$13000.00

/s/

Claimant or Representative

**CLAIM FORM MUST BE FILLED OUT
PROPERLY OR CLAIM WILL BE RETURNED
WITHOUT FILING**

239a

LAW OFFICES
OF
ALLEN G. WEINBERG
9454 WILSHIRE BOULEVARD
SUITE 600
BEVERLY HILLS, CALIFORNIA 90212

ALLEN G. WEINBERG
DEREK K. KOWATA
TELEPHONE (310) 550-7177
FACSIMILE (310) 550-1558

March 12, 2002

Risk Management Division
County of San Bernardino
222 Hospitality Lane, 3rd Floor
San Bernardino, CA 92415-0016

Re: *Musso v. San Bernardino*

Dear Sir / Madam:

This is to inform you that this office represents Paul Musso with respect to the claim he filed today with your office. I enclose a copy.

This is a fairly simple matter. My client had every right to cultivate marijuana for his own personal medical use and deputy sheriffs confiscated the plants even though an advisement that the plants were being grown for medical purposes was posted on the plants.

I look forward to hearing from you soon so we can discuss the possibility of settlement in advance of litigation.

240a

Very truly yours,

/s/

Allen G. Weinberg

AGW:tbn

Encl.

CC: Mr. Paul Musso

241a

CLAIM AGAINST
COUNTY OF SAN BERNARDINO

Date March 12, 2002

TO: Risk Management Division
County of San Bernardino
222 Hospitality Lane, 3rd Fl.
San Bernardino, CA 92415-0016

Claim is hereby made against the treasury of the
County of San Bernardino, State of California, as
follows:

Less than \$10,000 – State the total amount claimed
\$ _____

More than \$10,000 – Check one of the boxes:

Municipal Court Jurisdiction (\$10,000
\$25,000) ☐

Superior Court Jurisdiction (\$25,001 and up)
☒

Claimant makes the following statements in support
of the claim:

1. Name of Claimant: Paul — Musso
First Middle Last

310 350-7177 _____
(Area Code and Phone No.)
2. Address of Claimant: 17572 Greenwood Ct.
Street

242a

Devore, 92407

City Zip Code

3. Notice concerning claim should be sent to:

Law Office of Allen G. Weinberg Allen G.

Weinberg

Name

9454 Wilshire Blvd Suite 600 Beverlyhills

Address

Zip Code

310-550-7177

(Area Code and Phone No.)

4. Circumstances giving rise to claim are as follows:

Sept. 14th, 2001 unknown time. Unknown San Bernardino County Sheriff Department employees entered claimants property and removed 13 (thirteen) marijuana plants for which claimant cultivated for his personal medical use. Claimant had proper medical authorization as required under Health and Safety Code. Notice of medical use was posted on plants.

5. Date, Time and Place (city, street, cross-street)

damage occurred and nature thereof: Sept. 14th 2001 unknown time. 17572 Greenwood Ct. Devore CA. 92407. Raid by Sherif Department siezing marijuana plants possessed for medical purposes. Reference file # 010103677

6. Public property and/or public officers or employees

causing injury, damage or loss: Unknown employees of San Bernardino County Sheriff Department. Reference file # 010103677

243a

7. Name, address and telephone number of witnesses:
Paul Musso 17572 Greenwood Ct. Devore, CA.
92407 Contact via attorney 310-550-7177
8. Basis of computation of claimed amount is as follows:

Medical expense to date Approximately \$4500.00
Estimated future medical expenses \$720.00 per
month

Other expenses _____

Other damages _____

Lost wages _____

General damages Excess of \$25000.00

Property damage Approximately \$13000.00

/s/ _____

Claimant or Representative

**CLAIM FORM MUST BE FILLED OUT
PROPERLY OR CLAIM WILL BE RETURNED
WITHOUT FILING**

244a

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN BERNARDINO
STATE OF CALIFORNIA, CENTRAL COURT
MINUTE ORDER

CASE NO: — SSB31231 DATE: 04/11/03
CASE TITLE: MUSSO V SB SHERIFF

DEPT: 04/11/03
TIME: 11:27 Ruling on Submitted Matter

COMPLAINT TYPE: SCI

JUDGE ZIEBARTH PRESIDING

Clerk: Bronwyn Murphy

PROCEEDINGS:
COURT RULES AS FOLLOWS ON SUBMITTED
MATTER:
THE PLAINTIFF HAS NO COGNIZABLE CLAIM
FOR MONETARY DAMAGES UNDER THE FACTS
OF THIS CASE

Judgment on PLAINTIFF'S CLAIM of MUSSO as
follows:

Judgment for defendant SAN BERNARDINO
SHERIFF GARY PENROD and against Plaintiff
PAUL MUSSO

Stage at Disposition: After Trial - after evidence both
sides by Court

Action Dispo: Judgment
Complaint dispositioned by Judgment.

245a

Plaintiff has the burden to prove a cause of action and/or damages by a preponderance of the evidence. Plaintiff failed to meet the burden and did not prove a cause of action and/or damages on which a judgment could be awarded. Judgment for defendant.

Judgment minutes concluded

Action - Complete

=====MINUTE ORDER END=====

EXHIBIT F

SUPERIOR COURT OF CALIF
COUNTY OF SAN BEWARDINO
Register of Actions
Central

10/16/02

Page: 1

Case Number : SSB31231
Case Name . . : MUSSO V SB SHERIFF
Case Type . . : Small Claims
Category . . . : SMALL CLAIMS/ IN COUNTY
Case Status : Active

=====

Complaint Type : PLAINTIFF'S CLAIM
Filed: 8/16/02

SM CL PLAINTIFF (s) :
PAUL MUSSO

SM CLAIMS DEFT. (s) :
SAN BERNARDINO Served
SHERIFF GARY PENROD

Action Date	Description	Disposition
8/16/02	Claim of Plaintiff Declaration of Non-Military Service Receipt: 020816-0024 \$20.00	—
9/04/02	Proof of Service Filed on SAN BERNARDINO SHERIFF GARY PENROD; Party served	—

247a

on 08/21/02 with fees of \$30.00.

9/17/02 Small Claims Hearing Continue
Dept.: S7 Time : 8:30
Judge Pro Tem: BART BRIZZEE
presiding
Clerk: Stacy Shipley
Bailiff: Aaron R. Serrano
-

APPEARANCES:

Plaintiff PAUL MUSSO present
Defendant SAN BERNARDINO
SHERIFF GARY PENROD present
BY RICH CASTANON
-

PROCEEDINGS:

DEFENDANT DOES NOT STIP
TO PRO TEM MATTER ORDERED
TRANSFERRED TO D-S6
-

Current hearing continued to
10/08/02 at 8:30 in Department S6
Notice waived.

PLAINTIFF AND DEFENDANT
GIVEN COPY OF MINUTE
ORDER

====MINUTE ORDER END====

====MINUTE ORDER END====

====MINUTE ORDER END====

9/27/02 CASE SENT TO DEPT. '2'
FOR 170.6 FILED ON JUDGE
GAFKOWSKI

COPY OF 170.6 FORWARDED -

248a

TO DEPT S6 (JUDGE GAFKOWSKI)

9/30/02 Hearing Re: AFFIDAVIT OF Continue
PREJUDICE AND
REASSIGNMENT.

Dept.: S2 Time: 8:30

CHRISTOPHER J WARNER
presiding
Clerk: Gail Anderson
(NOT REPORTED)

-
PROCEEDINGS:
AN AFFIDAVIT OF PREJUDICE
HAVING BEEN FILED ON
9/24/02 BY DEFENDANT AS
TO JUDGE FRANK GAFKOWSKI,
THIS MATTER IS ASSIGNED
TO JUDGE JOHN LEAHY/S6

-
HEARING:
Small Claims Hearing set for
10/16/02 at 8:30 in Department S5.

-
I declare under penalty of perjury,
under the laws of the State of
California, that a copy of the
ruling was mailed to counsel/parties
of record on 09/30/02. Executed on
09/30/02, by Gail Anderson,
Court Clerk.

====MINUTE ORDER END====

----MINUTE ORDER END----

====MINUTE ORDER END====

Vacate HSC hearing scheduled
for 10/08/02 at 8:30 in Department S6.

249a

10/08/02 Small Claims Hearing
Dept. : S6 Time : 8:30

10/16/02 Small Claims Hearing
Dept.: S5 Time: 8:30

END OF CASE PRINT

EXHIBIT G

**CLAIM AGAINST COUNTY OF
SAN BERNARDINO
(CLAIM FORM MUST BE FILLED OUT
PROPERLY OR CLAIM WILL BE
RETURNED WITHOUT FILING)**

DATE: 3-7-01

Claim is hereby made against the treasury of the County of San Bernardino, State of California, as follows:

- Less than \$10,000 – State the total amount claimed
\$ 4,450.00
- More than \$10,000 – Check one of the boxes:
 - ☒ Municipal Court Jurisdiction (\$10,000- \$25,000)
 - ☐ Superior Court Jurisdiction (\$25,001 and up)

Claimant makes the following statements in support of the claim:

1. Name of Claimant: Larry Jay Nielsen
First Middle Last

(760) 951-9513
(Area Code and Phone No.)
2. Address of Claimant: 15410 LaPaz Dr. #L-8
Street

Victorville 92392
City Zip Code

251a

3. Notice concerning claim should be sent to:

Larry Nielsen P.O. Box 707 Victorville 92393

Name Address Zip Code

(760) 951-9513

(Area Code and Phone No.)

4. Circumstances giving rise to claim are as follows:
On Feb 9th 2001 V.V.P.D. responded to a False
51/50 Claim I am a AIDS Patient who uses &
Grows Medical Marijuana I showed the Deputies
My Doctor's Recomendation & they proceeded to
take my Plants Medicine & A Scale
5. Date, Time and Place (city, street, cross-street)
damage occurred and nature thereof: 15410 LaPaz
Drive #L-8 Victorville, CA. 92392 Mojave Dr. @
LaPaz Drive
6. Public property and/or public officers or employees
causing injury, damage or loss: Victor Valley
Sheriff's Dept & Narcotic's Division
7. Name, address and telephone number of witnesses:
John Vaughn & Matt Francis (760) 951-9681
15410 LaPaz Dr. The above are the matience crew
for Panandars Village Apts
8. Basis of computation of claimed amount is as
follows:

Medical expense to date 2,500.00 or

Estimated future medical expenses _____

Other expenses 50z Medicine Taken

Other damages _____

Loss wages _____

252a

General damages _____

Property damage 1950.00

/s/ _____

Claimant or Representative (Signature)

RETURN COMPLETED FORM TO:

Risk Management Division - County of San
Bernardino, State of California
222 W. Hospitality Lane, 3rd Floor
San Bernardino, CA 92415-0016

Office: (909) 386-8631

Fax: (909) 386-6670

07-8387-286

BACKGROUND INFORMATION: The California Department of Justice heads the multi-agency CAMP program, comprised of the California National Guard, United States Forest Service, Bureau of Land Management, U.S. Drug Enforcement Administration and dozens of local and county law enforcement

agencies. In 2004, CAMP conducted 181 raids in 30 counties, and seized over 621,000 marijuana plants and made 41 arrests. Riverside County had the largest number of seizures, with over 97,000 plants seized.

Approval of the proposed MOU would enable the County to participate in this program and utilize CAMP personnel and equipment. Each participating entity pays the salary cost and assumes liability for its personnel. The term of the 2005 CAMP program is July 1, 2005 - October 31, 2005.

REVIEW AND APPROVAL BY OTHERS: The proposed action has been reviewed and approved by County Counsel (Dennis S. Tilton, Deputy County Counsel, 387-5246) on June 1, 2005; and the County Administrative Office (Laurie Rozko, Administrative Analyst, 387-8997) on June 2, 2005.

FINANCIAL IMPACT: There is no additional local cost impact. Participation in this program will be accomplished utilizing existing, budgeted staff.

SUPERVISORIAL DISTRICT(S): All

PRESENTER: Dennis J. Casey, Captain, 387-0640

MIN06-14 w CAMP.doc

[SEAL OF THE BOARD OF SUPERVISORS,
SAN BERNARDINO COUNTY, CA]

Record of Action of the Board of Supervisors
AGREEMENT NO. 05-486
APPROVED(CONSENT CALENDAR)
BOARD OF SUPERVISORS

COUNTY OF SAN BERNARDINO

MOTION	<u>AYE</u>	<u>AYE</u>	<u>SECOND</u>	<u>MOVE</u>	<u>AYE</u>
	1	2	3	4	5

DENA SMITH, INTERIM CLERK OF THE BOARD

BY /s/ Mary Louise []

DATED: June 14, 2005

ITEM 061

cc: Sheriff Admin.-Casey w/2
agreements for signature
Contractor c/o Sheriff Admin.
Auditor-Valdez w/agree.
IDS w/agreement
Risk Management
Sheriff Admin.-Penrod
Co. Counsel-Tilton
CAO-Rozko
File w/agreement

ml

[OFFICIAL SEAL
of the County of
San Bernardino]

County of San Bernardino

FAS

CONTRACT TRANSMITTAL

FOR COUNTY USE ONLY

X	New	Vendor Code	SC	SHR	A	Contract Number
	Change					
	Cancel					
County Department Sheriff's Department			Dept. SHR	Orgn. SHR		Contractor's License No.
County Department Contract Representative Dennis J. Casey, Captain			Telephone 387-0640			Total Contract Amount 0.00
Contract Type						
<input type="checkbox"/> Revenue <input type="checkbox"/> Encumbered <input type="checkbox"/> Unencumbered <input checked="" type="checkbox"/> Other: Operations Agreement						
If not encumbered or revenue contract type, provide reason: _____						

Commodity Code		Contract Start Date		Contract End Date	Original Amount	Amendment Amount
		07/01/05		10/31/05	0.00	
Fund AAA	Dept. SIIR	Organization SIIR	Appr.	Obj/Rev Source	GRC/PROJ/J OB No.	Amount 0.00
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/J OB No.	Amount
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/J OB No.	Amount
Project name CAMP 2005		Estimated Payment Total by Fiscal Year				
		FY	Amount	I/D	FY	Amount I/D

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CONTRACTOR State of California, Department of Justice, Campaign Against Marijuana Planting

Federal ID No. or Social Security No. _____

Contractor's Representative Val Jimenez, Operations Commander

Address 3046 Prospect Park Drive, Suite 1, Rancho Cordova, CA 95670 Phone (916) 464-2020

Nature of Contract: *(Briefly describe the general terms of the contract)*

Memorandum of Understanding for the Sheriff's Department to participate in the 2005 Campaign Against Marijuana Planting (CAMP), for the period of July 1, 2005 October 31, 2005.

(Attach this transmittal to all contracts not prepared on the "Standard Contract" form.)

Approved as to Legal Form (sign in blue ink)

► /s/ Dennis S. Tilton

County Counsel, by Dennis S. Tilton, Deputy

Date 6-1-05

Reviewed as to Contract Compliance

► _____

Date _____

259a

Presented to BOS for Signature

► /s/

Department Head

Date 6/30/05

Auditor/Controller-Recorder Use Only

Contract Database <input type="checkbox"/> FAS	
Input Date	Keyed By

THIS IS NOT A CONTRACT
THIS IS A COVER
TRANSMITTAL ONLY

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
COUNTY OF SAN BERNARDINO
AND THE
STATE OF CALIFORNIA
CAMPAIGN AGAINST MARIJUANA
PLANTING (CAMP) PROGRAM**

This Memorandum of Understanding (MOU) is entered into by the parties regarding the Campaign Against Marijuana Planting (CAMP) program for the purpose of identifying agency responsibilities related to cannabis eradication operations conducted in San Bernardino County.

I. PROJECT DESCRIPTION

The period covered by this Agreement shall be from July 1, 2005 through October 30, 2005.

An eradication team(s) will be assigned to a region that may provide eradication services to San Bernardino County and will be comprised of law enforcement personnel from local, state, and federal agencies. The Sheriff will be responsible for carrying out the law enforcement function of the team(s). The CAMP Operations Commander and the Regional Operations Commander (ROC) will be responsible for the overall coordination of team efforts, including general operating procedures and coordinating priorities.

261a

CAMP team leaders will be responsible for the timely completion and submission of crop seizure reports when the team is involved in a raid. When the eradication team is not involved, the Sheriff will assume this responsibility.

CAMP teams will abide by the law enforcement policies, rules, and regulations as set forth by the Sheriff of the county in which they are working. If a conflict in policy should arise and cannot be resolved, the CAMP Commander and the Sheriff, (or his or her designee), will meet to resolve the conflict.

Personnel assigned to the CAMP program, while operating in San Bernardino County, shall be deemed to be continuing under the employment of their jurisdiction and shall have the same powers, duties, privileges, responsibilities and immunities as are conferred upon them as peace officers in their own jurisdictions.

For the purpose of indemnification of team personnel and their participating agency against any loss, damage, or liability arising out of the services and activities of the teams; personnel assigned by any agency shall be deemed to be continuing under the employment of that agency and covered by workers' compensation to the extent such coverage applies in this situation.

Each agency contributing personnel resources to the teams will be responsible for all salaries and benefits of such employees except for those hired by CAMP as state emergency hires in which case

CAMP will be responsible for salaries and benefits of such employees.

II. AGENCY COMMITMENTS

The Sheriff's Department is committed to furnish a lead deputy while CAMP teams are operational in the county and be responsible for the disposition of all contraband and evidence seized during CAMP operations. The local jurisdiction shall conduct the investigation and have the responsibility to prosecute any arrested suspects with the District Attorney's Office.

I have read and agree with the above MOU and our agency will be participating during the CAMP 2005 marijuana eradication season.

VAL JIMENEZ DATE
Operations Commander
Campaign Against Marijuana Planting

/s/ _____
SHERIFF OR DESIGNEE DATE
San Bernardino County

I have read the above MOU; however, our agency is not interested at this time.

SHERIFF OR DESIGNEE DATE
San Bernardino County

263a

EXHIBIT I

**REPORT/RECOMMENDATION TO THE
BOARD OF SUPERVISORS OF
SAN BERNARDINO COUNTY, CALIFORNIA
AND RECORD OF ACTION**

February 15, 2006

Original: Contracts Unit w/Agreement

Copy: Captain Dvorak w/Agreement

Dennis Tilton w/Agreement

Sandy Hosch w/Agreement

Carolyn Bondoc

File

November 15, 2005

FROM: GARY PENROD, Sheriff-Coroner
Sheriff's Department

**SUBJECT: AGREEMENT WITH THE U.S.
DEPARTMENT OF JUSTICE, DRUG
ENFORCEMENT ADMINIS-
TRATION, FOR PARTICIPATION IN
THE SOUTHERN CALIFORNIA
DRUG TASK FORCE**

RECOMMENDATIONS:

1. Approve **Agreement No. 05-1091** with the U.S. Department of Justice, Drug Enforcement Administration (DEA) for continued participation in the Southern California Drug Task Force (SCDTF) and reimbursement of salary and overtime costs up to \$131,294, from October 1, 2005 through September 30, 2006.

2. Authorize Sheriff to sign agreement on behalf of the County.

BACKGROUND INFORMATION: Since 1992, the Sheriff's Department has participated in the SCDTF, which was established by the DEA as a means of targeting, investigating, and prosecuting major drug trafficking organizations throughout the greater Southern California area. Participation in the task force by the Sheriff's Department results in better coordination with other agencies involved in major trafficking investigations.

Under this Agreement the Sheriff's Department will assign up to two clerical positions, one technical support position and two deputies to the task force, utilizing existing staff. The DEA will provide reimbursement of the salary cost for the two clerical positions, up to \$35,503 each; the salary cost of the technical support position, up to \$30,000; and overtime costs of the deputies, up to \$15,144 each, for a total of \$131,294. The term of this agreement is from October 1, 2005 through September 30, 2006 and may be terminated by either party upon 30-days advance written notice.

REVIEW BY OTHERS: This item has been reviewed and approved as to form by County Counsel (Dennis Tilton, Deputy County Counsel, 387-5246) on November 2, 2005; and has been reviewed by the County Administrative Office (Laurie Rozko, Administrative Analyst, 387-8997) on November 4, 2005.

FINANCIAL IMPACT: There is no additional local cost impact related to this item. Reimbursements from

the DEA, in the amount of \$131,294, will offset salary and benefit costs for five positions. Sufficient appropriations and revenue for this ongoing project were included in the Sheriff's 2005-06 budget, State Seized Assets Special Revenue Fund (SCT-SHR). Prior to year-end, reimbursement is transferred to the general fund (AAA-SHR) for salary and benefit costs related to the SCDTF.

SUPERVISORIAL DISTRICT(S): All

PRESENTER: Dennis J. Casey, Captain, 387-3637

MIN11-15 c DEASoCADrugTF05-06.DOC

[SEAL OF THE BOARD OF SUPERVISORS,
SAN BERNARDINO COUNTY, CA]

Record of Action of the Board of Supervisors
Agreement No. 05-1091

APPROVED(CONSENT CALENDAR)
BOARD OF SUPERVISORS
COUNTY OF SAN BERNARDINO

MOTION	<u>AYE</u>	<u>SECOND</u>	<u>AYE</u>	<u>AYE</u>	<u>MOVE</u>
	1	2	3	4	5

DENA SMITH INTERIM CLERK OF THE BOARD

BY /s/

DATED: November 15, 2005

ITEM 038

CC: Sheriff Admin.-Casey w/agree

266a

Contractor c/o Sheriff w/agree
IDS w/agree
ACR – Valdez w/agree
Risk Management
Sheriff – Penrod; Casey
County Counsel-Tilton
CAO-Rozko

File w/agreement

mb

Rev 07-97

[OFFICIAL SEAL
of the County of
San Bernardino]

County of San Bernardino

FAS

CONTRACT TRANSMITTAL

FOR COUNTY USE ONLY

X	New	Vendor Code	SC	SHR	A	Contract Number 05-1091
	Change					
	Cancel					
County Department SHERIFF		Dept. SHR		Orgn. SHR		Contractor's License No.
County Department Contract Representative DENNIS J. CASEY				Telephone (909) 387-0640		Total Contract Amount \$131,294
Contract Type <input checked="" type="checkbox"/> Revenue <input type="checkbox"/> Encumbered <input type="checkbox"/> Unencumbered <input type="checkbox"/> Other:						
If not encumbered or revenue contract type, provide reason: _____						

Commodity Code		Contract Start Date 10-01-05		Contract End Date 9-30-06	Original Amount \$131,294	Amendment Amount
Fund SCT	Dept. SHR	Organization SHR	Appr.	Obj/Rev Source 9970	GRC/PROJ/J OB No.	Amount \$131,294
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/J OB No.	Amount
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/J OB No.	Amount
Project name		Estimated Payment Total by Fiscal Year				
So California Drug Task Force		FY	Amount	L/D	FY	Amount I/D
HIDTA (Cost Center 270)		—	—	—	—	—
		—	—	—	—	—
		—	—	—	—	—

CONTRACTOR United States Department of Justice,
Drug Enforcement Administration

Federal ID No. or Social Security No. _____

Contractor's Representative Lekita Gray

Address SCDTF, 1340 West Sixth Street, Los Angeles,
CA 90017 Phone (213) 989-6406

Nature of Contract: *(Briefly describe the general terms of the contract)*

The attached agreement between the United States Department of Justice, Drug Enforcement Administration, and the County of San Bernardino outlines the continuation of the Sheriff's participation in the Southern California Drug Task Force, which consists of federal, state, and local law enforcement agencies. The County, through the Sheriff's Department, is responsible for the following:

- Assign up to two clerical positions. The DEA will reimburse the County for the cost of these positions up to \$35,503 per position.
- Assign one technical support position. The DEA will reimburse the County for the cost of this position up to \$30,000.
- Detail two experienced law enforcement officers to the task force. The DEA will provide overtime reimbursement up to \$15,144 per officer.

270a

The term of this agreement is from October 1, 2005 through September 30, 2006.

(Attach this transmittal to all contracts not prepared on the "Standard Contract" form.)

Approved as to Legal Form (sign in blue ink)

► /s/ Dennis S. Tilton

County Counsel, by Dennis S. Tilton, Deputy

Date 11-2-05

Reviewed as to Contract Compliance

► _____

Date _____

Presented to BOS for Signature

► /s/ _____

Department Head

Date 11/02/05

Auditor/Controller-Recorder Use Only

Contract Database <input type="checkbox"/> FAS	
Input Date	Keyed By

THIS IS NOT A CONTRACT
THIS IS A COVER
TRANSMITTAL ONLY

**LOS ANGELES HIGH INTENSITY DRUG
TRAFFICKING AREA
SOUTHERN CALIFORNIA DRUG TASK FORCE**

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE DRUG ENFORCEMENT
ADMINISTRATION
AND
THE SAN BERNARDINO COUNTY
SHERIFF'S DEPARTMENT**

This agreement is effective this 1st day of October, 2005 between the United States Department of Justice, Drug Enforcement Administration, Los Angeles Field Division 0(hereinafter "DEA") and the County of San Bernardino, California.

WHEREAS there is evidence that trafficking in narcotics and dangerous drugs exists in the Los Angeles High Intensity Drug Trafficking Area (Los Angeles, Orange, Riverside, and San Bernardino Counties), and whereas such criminal activity has a substantial and detrimental effect on the health and general welfare of the people of the Los Angeles metropolitan area, the parties hereto agree to the following:

1. The Southern California Drug Task Force will perform the activities and duties described below:

a. Disrupt the illicit drug traffic in the Los Angeles metropolitan area by immobilizing targeted violators and trafficking organizations whose activities have multi-jurisdictional and international ramifications;

b. Gather and report intelligence data relating to trafficking in narcotics and dangerous drugs;

c. Conduct undercover operations where appropriate, and engage in other traditional methods of investigation in order that SCDTF activities will result in effective prosecution of violators before the Courts of the United States and the State of California.

d. In order to accomplish the above the County of San Bernardino agrees to furnish up to a total of two (2) full-time clerical personnel for the length of this agreement and subsequent renewals. Details of an administrative nature, such as paying salary, fringe benefits, if any, leave, and health insurance will be handled by the County of San Bernardino.

2. To accomplish the objectives of the Los Angeles High Intensity Drug Trafficking Area (LA-HIDTA) program, the County, acting through the San Bernardino County Sheriff's Department and DEA, with other participating Federal, State, and local law enforcement agencies will:

a. Establish the Southern California Drug Task Force (SCDTF) consisting of Federal, State, and local law enforcement agencies for which DEA will provide overall management and direction;

b. Target, investigate, and prosecute major drug trafficking organizations in the Los Angeles High Intensity Drug Trafficking Area, and to coordinate with other HIDTA regions as appropriate;

3. DEA will, subject to the availability of appropriated funds to be provided by the Office of National Drug Control Policy or any continuing resolution thereof, reimburse the County of San Bernardino for the salary cost of these clerical positions, including compensatory time off, up to a maximum rate of \$35,503.00, secretarial position per person. The County of San Bernardino will absorb the remainder of the salary costs and the fringe benefit costs of these positions, if any. DEA shall not assign these clerical employees to work hours which would require overtime compensation.

4. During the period of assignment, the clerical personnel assigned will follow all DEA policies, procedures, and guidelines, including those relating to conduct, DEA property, reporting systems, and all clerical support functions. Failure to adhere to DEA guidelines and procedures shall be grounds for dismissal from the Task Force.

This agreement with San Bernardino County will continue until such time that DEA can locate and select individual (s) to fill a DEA - approved clerical position.

5. During the period of assignment, the clerical support personnel assigned to the Task Force will retain their status as clerical support personnel of the San Bernardino County Sheriff's Department, and will be entitled to receive the same benefits from the State of California and County of San Bernardino to which they would have been entitled if not assigned to the Task Force.

6. To accomplish the objectives of the SCDTF, the County of San Bernardino agrees to detail two (2) experienced officers to the SCDTF. During this period of assignment, the San Bernardino County Sheriff's officers will be under the direct supervision and control of DEA supervisory personnel assigned to the Task Force.

7. The two (2) officers assigned to the Task Force shall adhere to DEA policies and procedures. Failure to adhere to DEA policies and procedures shall be grounds for dismissal from the Task Force. The two (2) deputies assigned to the Task Force shall be deputized as Task Force Officers of DEA pursuant to 21 U.S.C. 878.

8. To accomplish the objectives of the SCDTF, DEA will also assign special agents to the Task Force. DEA will also, subject to the availability of annually-appropriated funds provided by the Office of National Drug Control Policy (ONDCP) or any continuing resolution thereof, provide necessary funds and equipment to support the activities of the DEA special agents and the San Bernardino County Deputies assigned to the Task Force. This support will include: office space, office supplies, travel funds, funds for the purchase of evidence and information, clerical support, investigative equipment, training, funds for overtime costs described below, and other support items.

9. During the period of assignment to the SCDTF, the County of San Bernardino will remain responsible for establishing the salary and benefits, including overtime, of the two (2) officers assigned to the Task Force, and for making all payments due them. DEA

will, subject to availability of funds, reimburse the County of San Bernardino for over-time payments made by it to the San Bernardino County officers assigned to the SCDTF for overtime, up to a sum equivalent to twenty-five percent (25%) of the annual salary of a GS-1811-12, step 1, Federal employee (currently \$15,144.00 per officer). The grand total for two (2) San Bernardino County Sheriff's officers at \$15,144.00 each is \$30,288.00.

10. The SCDTF, subject to the availability of appropriated funds to be provided by the Office of National Drug Control Policy or any continuing resolution thereof, reimburse the County of San Bernardino for the salary costs of one part time technical support position. The SCDTF will pay the SBSD an amount not to exceed \$30,000.00 for the technical support position for assistance provided for during Fiscal Year 2006. The County of San Bernardino will absorb the remainder of the salary costs and the fringe benefit costs of this position, if any.

11. During the period of assignment, the technical support personnel assigned will spend 20 hours a week at the SCDTF in Riverside, California, and 20 hours a week at the San Bernardino County Sheriff's Department. The technical support personnel will be on call at all times to respond to SCDTF and SBSD technical needs.

12. The County of San Bernardino shall permit and have readily available for examination and auditing by DEA, the United States Department of Justice, the Comptroller General of the United States, and any of their duly authorized agents and representatives, any

and all records, documents, accounts, invoices, receipts or expenditures relating to this agreement. The County of San Bernardino shall maintain all such records until all audits and examinations are completed and resolved, or for a period of three (3) years after termination of this agreement, whichever is sooner.

13. The County of San Bernardino shall comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act (as incorporated in the Civil Rights Act of 1991) and all requirements imposed by or pursuant to the regulations of the United States Department of Justice implementing that law, 28 CFR Part 42, subparts C and D and F.

14. The County of San Bernardino agrees that an authorized officer or employee will execute and return to DEA the attached OJP Form 4061 / 6, Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug Free Workplace Requirements. The County of San Bernardino acknowledges that this agreement will not take effect and no Federal funds will be awarded to the County of San Bernardino until the completed certification is received.

15. When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, the County of San Bernardino shall state: (1) the percentage of the total cost of the program or project which will be financed with Federal money; and (2) the dollar amount of Federal funds for the project or program.

16. The term of this agreement shall be from October 1, 2005 to September 30, 2006. This agreement may be terminated by either party on thirty (30) days advance written notice. Billings for all outstanding obligations must be received by DEA within ninety (90) days of the date of termination of this agreement. DEA will be responsible only for obligations incurred by the County of San Bernardino during the term of this agreement.

For the Drug Enforcement Administration:

Stephen C. Delgado
Special Agent in Charge

Date: _____

For the County of San Bernardino _____

Gary S. Penrod
Sheriff

Date: _____

**U.S. DEPARTMENT OF JUSTICE
OFFICE OF JUSTICE PROGRAMS
OFFICE OF THE COMPTROLLER**

**CERTIFICATIONS REGARDING LOBBYING;
DEBARMENT, SUSPENSION AND OTHER
RESPONSIBILITY MATTERS; AND
DRUG-FREE WORKPLACE REQUIREMENTS**

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 28 CFR Part 69. "New Restrictions on Lobbying" and 28 CFR Part 67, "Government-wide Department and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon reliance will be placed when the Department of Justice determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 28 CFR Part 69, for persons entering into a grant or cooperative agreement over

\$100,000, as defined at 28 CFR Part 69, the applicant certifies that:

(a) No Federal appropriate funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure of Lobbying Activities," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements and subcontracts) and that all sub-recipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS (DIRECT RECIPIENT)

As required by Executive Order 12549, Debarment and Suspension, and implemented at 28 CFR Prt 67, for prospective participants in primary covered transactions, as defined at 28 CFR Part 67, Section 67.510-

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 28 CFR Part 67, Subpart F, for grantees, as defined at 28 CFR Part 67 Sections 67.615 and 67.620-

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

(1) The dangers of drugs abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employees of convicted employees must provide notice, including position title, to: Department of Justice, Office of Justice Programs, ATTN: Control Desk, 633 Indiana Avenue, N.W., Washington, D.C. 20531. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted-

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, country, state, zip code)

Check ☐ if there are workplace on file that are not identified here.

Section 67, 630 of the regulations provides that a grantee that is a State may elect to make one certification in each Federal fiscal year. A copy of which should be included with each application for Department of Justice funding. States and State agencies may elect to use OJP Form 4061/7.

Check ☐ if the State has elected to complete OJP Form 4061/7.

**DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 28 CFR Part 67, Subpart F, for grantees, as defined at 28 CFR Part 67; Sections 67.615 and 67.620-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in condition any activity with the grant; and

B. If convinced of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing within 10 calendar days of the conviction, to: Department of Justice, Office of Justice Programs, ATTN: Control Desk, 633 Indiana Avenue, N.W., Washington, D.C. 20531.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

1. Grantee Name and Address:

San Bernardino County Sheriff's Department
655 E. Third Street
San Bernardino, CA 92415

2. Application Number and/or Project Name

285a

3. Grantee IRS/Vendor Number

95-6002748

4. Typed Name and Title of Authorized Representative

Gary S. Penrod, Sheriff-Coroner

5. Signature

6. Date

OJP FORM 4061/6 (3-91) REPLACES OJP FORMS
4061/2, 4062/3 and 4061/4 WHICH ARE OBSOLETE.

286a

EXHIBIT J

**REPORT/RECOMMENDATION TO THE
BOARD OF SUPERVISORS OF SAN
BERNARDINO COUNTY, CALIFORNIA AND
RECORD OF ACTION**

May 31, 2005

Original: Contracts Unit w/Award

Copy Capt. Cook

Lt Garland w/Award

Terry Sullivan w/Award

Nancy Clark

Carolyn Bondoc File

May 3, 2005

FROM: GARY PENROD, Sheriff-Coroner
Sheriff's Department

**SUBJECT: GRANT AWARD FOR THE HIGH
INTENSITY DRUG TRAFFICKING
AREA (HIDTA) FROM THE OFFICE
OF NATIONAL DRUG CONTROL
POLICY - GRANT AWARD NO.
15PLAP540Z**

RECOMMENDATION: Accept High Intensity Drug
Trafficking Area (HIDTA) Grant Award No.
15PLAP540Z (**Agreement No. 05-288**) from the
Office of National Drug Control Policy, in the amount
of \$675,000 for the period January 1, 2005 through
December 1, 2005.

BACKGROUND INFORMATION: The Office of
National Drug Control Policy has issued a HIDTA

award to Riverside County for a Methamphetamine Regional Strike Force in Riverside and San Bernardino Counties, to target production for "stove top" operations, major cartels, and chemical companies involved in the manufacture of basic ingredients used in methamphetamine production.

Of the \$1,781,776 awarded to Riverside County, \$675,000 is allocated to San Bernardino County to fund overtime, training and equipment costs for local Street Enforcement Teams within the County. The Sheriff's Department will submit claims for reimbursement to Riverside County, as the administrator of the grant.

This grant award is for the period of January 1, 2005 through December 31, 2005, and is the continuation of a grant that was first funded in 1998-99. The Sheriff's Department continued to participate in the task force while waiting for confirmation of the new grant award amount. This year's grant award was accepted by Riverside County on March 17, 2005 and is being submitted for approval at the first available Board date after receipt of the documents from Riverside County. No matching funds are required.

REVIEW AND APPROVAL BY OTHERS: This item has been reviewed and approved as to legal form by County Counsel (Kevin L. Norris, Deputy County Counsel, 387-5441), on April 21, 2005, and has been reviewed by the County Administrative Office (Laurie Rozko, Administrative Analyst, 387-8997) on April 21, 2005.

FINANCIAL IMPACT: Program funding in the amount of \$675,000 was included in the Department's

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budget for 2004-05 and proposed budget for 2005-06.
There is no local cost impact related to this item.

SUPERVISORIAL DISTRICT(S): All Districts

PRESENTER: Dennis J. Casey, Captain, 387-3637

Min5-3 c Riv HIDTA05

[SEAL OF THE BOARD OF SUPERVISORS,
SAN BERNARDINO COUNTY, CA]

Record of Action of the Board of Supervisors
AGREEMENT NO. 05-288

APPROVED(CONSENT CALENDAR)
BOARD OF SUPERVISORS
COUNTY OF SAN BERNARDINO

<u>MOTION</u>	<u>AYE</u>	<u>SECOND</u>	<u>AYE</u>	<u>MOVE</u>	<u>AYE</u>
1		2		3	
				4	
					5

J. RENEE BASNAN CLERK OF THE BOARD

BY /s/ _____

DATED: May 3, 2005

ITEM 067

cc: Sheriff's Dept.-Casey w/agree.
Contractor c/o dept. w/agree.
IDS-w/agree.
A/C-R-w/agree.
Risk Management
CC-Norris
CAO-Rozko

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Sheriff's Dept.-Penrod
File-w/agree.

tlh

Rev 07/97

[OFFICIAL SEAL
of the County of
San Bernardino]

County of San Bernardino

FAS

CONTRACT TRANSMITTAL

FOR COUNTY USE ONLY

X	New	Vendor Code	SC	SHR	A	Contract Number 05-288
	Change					
	Cancel					
County Department SHERIFF		Dept. SHR		Orgn. SHR		Contractor's License No.
County Department Contract Representative DENNIS J. CASEY, CAPTAIN		Telephone 387-0640		Total Contract Amount \$675,000		
<div style="text-align: center;">Contract Type</div> Revenue <input type="checkbox"/> Encumbered <input type="checkbox"/> Unencumbered <input type="checkbox"/> Other:						
If not encumbered or revenue contract type, provide reason: _____						

Commodity Code		Contract Start Date 01/01/05		Contract End Date 12/31/05	Original Amount \$675,000	Amendment Amount
Fund AAA	Dept. SIIR	Organization SHR	Appr.	Obj/Rev Source 9150	GRC/PROJ/J OB No.	Amount
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/J OB No.	Amount
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/J OB No.	Amount
Project name Riverside Meth Team		Estimated Payment Total by Fiscal Year				
HIDTA Award w/Riverside		FY	Amount	I/D	FY	Amount I/D
County for 2005		—	—	—	—	—
		—	—	—	—	—
		—	—	—	—	—
		—	—	—	—	—

CONTRACTOR Office of National Drug Control Policy,
National HIDTA Assistance Center

Federal ID No. or Social Security No. _____

Contractor's Representative Phuong DeSear

Address 11200 NW 20th Street, Suite 100, Miami, FL
33172 Phone (202) 395-6739

Nature of Contract: *(Briefly describe the general terms of the contract)*

The Office of National Drug Control Policy has issued a HIDTA award, in the amount of \$1,781,776, to the County of Riverside for a Meth Regional Strike Force in Riverside and San Bernardino Counties. This award is the continuation of a grant that was first funded in 1998-99. The program targets methamphetamine production at three levels: the "stove top" operations, major manufacturing cartels, and chemical companies involved in the manufacture of the basic ingredients used in methamphetamine production.

Of the \$1,781,776 awarded to Riverside County, \$675,000 is allocated to San Bernardino County to fund overtime, training and equipment costs for local Street Enforcement Teams within the County. Riverside County is the administrator of the grant. The San Bernardino County Sheriff's Department will submit claims for reimbursement to Riverside County. This grant award is for the period of January 1, 2005 through December 31, 2005.

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**ONDCP - GRANT AWARD TO RIVERSIDE
COUNTY - AWARD NO. I5PLAP540Z**

**ACCEPTED BY THE BOARD OF SUPERVISORS,
COUNTY OF SAN BERNARDINO, ON _____**

*(Attach this transmittal to all contracts not prepared on
the "Standard Contract" form.)*

Approved as to Legal Form (sign in blue ink)

► /s/ Kevin L. Norris
County Counsel, by Kevin L. Norris, Deputy

Date 4/21/05

Reviewed as to Contract Compliance

► _____

Date _____

Presented to BOS for Signature

► /s/
Department Head

Date 4-26-05

Auditor/Controller-Recorder Use Only

Contract Database <input type="checkbox"/> FAS	
Input Date	Keyed By

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THIS IS NOT A CONTRACT
THIS IS A COVER
TRANSMITTAL ONLY

**SUBMITTAL TO THE BOARD OF
SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA**

**SUBMITTAL DATE:
03/17/05**

FROM: Bob Doyle, Sheriff-Coroner-PA

SUBJECT: Acceptance of a High Intensity Drug
Trafficking Area (HIDTA) State and
Local Initiatives Funding Grant Award

RECOMMENDED MOTION: Move that the Board of Supervisors approve acceptance of a High Intensity Drug Trafficking Area (HIDTA) State and Local Initiatives Funding grant award in the amount of \$1,781,776, and authorize the Sheriff to sign the grant award on behalf of the Board.

BACKGROUND: The US. Office of National Drug Control Policy (ONDCP) has notified the Riverside County Sheriff's Department that it has been allocated HIDTA State and Local Initiatives Program funds for this year. The proposed grant award period will be from January 1, 2005 through December 31, 2005. County Counsel has approved the award documents as to form.

For over fourteen years, Riverside County has participated in the HIDTA program, which fosters cooperation among law enforcement agencies in their efforts to eliminate drug trafficking locally and nationally. The LA-HIDTA is comprised of the Los Angeles, Orange, Riverside, and San Bernardino counties.

BR 05-074 (Continued on Page 2)

/s/
Bob Doyle, Sheriff-Coroner-PA

FINANCIAL DATA

Current F.Y. Total Cost:	\$553.388
Current F.Y. Net County Cost:	\$0
Annual Net County Cost:	\$0
In Current Year Budget:	Yes
Budget Adjustment:	No
For Fiscal Year:	2004-05

SOURCE OF FUNDS: HIDTA Grant Funding

Position To Be Deleted Per A-30 ☒
Requires 4/5 Vote ☐

C.E.O. RECOMMENDATION:
APPROVE

County Executive Office Signature /s/

Prev. Agn. Ref.: 04/06/04 3.21 District: All

Agenda Number: 3.36

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

Dep't Recomm.: ☐ Consent ☒ Policy
Per Exec. Ofc.: ☐ Consent ☒ Policy

The funding levels for this multiple grant award are as follows: Regional Methamphetamine Task Force (RMTF) is \$1,275,000; Inland Narcotics Clearing

House (INCH) \$150,000; and the Inland Crackdown Allied Task Force (INCA) \$356,776. The RMTF award will continue to be split between two counties, with Riverside County receiving \$600,000 and San Bernardino receiving \$675,000. No County match is required.

The objectives of these grant programs remain unchanged. The RMTF will continue to provide a strong pro-active approach to the clandestine laboratory and methamphetamine problem in the Inland Empire. INCH will provide intelligence support on major narcotic cases to each law enforcement agency and a multi-agency task force within Riverside and San Bernardino Counties. In addition, INCH aids RMTF by providing analytical analysis of intelligence information, post seizure analysis, data collection methods, and generates case assistance documents, as well as periodicals to provide trend information. INCA, established in 1996 as an extension of the INCH program, will support the efforts of the Bureau of Narcotics Enforcement in enforcing the controlled substance laws of the State of California. It is responsible for increasing the flow of narcotics-related intelligence information between the various law enforcement agencies in California and other similar Crackdown Task Forces.

**Executive Office of the President Office of
National Drug Control Policy**

AWARD

Grant

Page 1 of 6

1. Recipient Name and Address
Riverside County Sheriffs Department
PO Box 512 Riverside, CA 92502
- 1A. Recipient IRS/Vendor No.
2. Subrecipient Name and Address
2. Subrecipient IRS/Vendor No.
3. Project Title
Multiple Initiative
4. Award Number: I5PLAP540Z
5. Project Period: 01/01/05 to 12/31/05
Budget Period: 01/01/05 to 12/31/05
6. Date: 04/06/05
7. Action
Initial: ☒
Supplemental: ☐
8. Supplement Number
9. Previous Award Amount
10. Amount of This Award **\$1,781,776.00**

11. Total Award **\$1,781,776.00**

12. Special Conditions

The above Grant is approved subject to such conditions or limitations as are set forth on the attached 5 page(s).

13. Statutory Authority for Grant: Public Law 108-447

**AGENCY APPROVAL/RECIPIENT
ACCEPTANCE**

14. Typed Name and Title of Approving ONDCP
Official

Joseph D. Keefe
Office of National Drug Control Policy

15. Typed Name and Title of Authorized Recipient
Official

Sheriff Bob Doyle
Riverside County Sheriff's Department

16. Signature of Approving ONDCP Official
/s/ Joseph D. Keefe

17. Signature of Authorized Recipient Date
/s/ Bob Doyle

Agency Use Only

18. Accounting Classification Code

19. HIDTA AWARD

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Award Recipient: Riverside County Sheriff's
Department

HIDTA: Los Angeles

Initiative: Inland Crackdown Allied Task Force

Project Contact: Mr. Roger Bass

Award Amount: **\$1,781,776.00**

Award Period: 1/1/2005 to 12/31/2005

ONDCP Contact:

All requests for payment and inquiries should be submitted to:

The National HIDTA Assistance Center
11200 NW 20th Street
Suite 100
Miami, FL 33172
Phone: 305-715-7600

A. Conditions

1. The award is based on the detail budget attached to the application submitted for this initiative. This is your approved budget for the initiative and any deviation must comply with the reprogramming requirements as set forth in the ONDCP Guidelines.

B. General Provisions

1. This award is subject to:
 - a. the Uniform Administrative Requirements for Grants and Grants to State and Local Governments, also known as the "Common Rule",
 - b. the Certifications Regarding Lobbying, Debarment, Suspension and Other Responsibility

Matters; Drug-Free Workplace Requirements; Federal Debt Status, and Nondiscrimination Statutes And Implementing Regulations.

c. the audit requirements of OMB Circular A-133,

d. the cost principles contained in OMB Circular A-87, and

e. the administrative guidelines contained in ONDCP's Financial and Administrative Guidelines.

2. Payment Basis

Request for Advance or Reimbursement shall be made using the Division of Payment Management System (www.dpm.psc.gov). Copies of invoices, payroll registers, and canceled checks must accompany the payment confirmation number to provide documentation for the reimbursement request. Request for advances will be accompanied by detail specifying the obligation. Documentation of how the advance was spent must be submitted before another advance or reimbursement can be requested.

Payments will be made via Electronic Fund Transfer to the award recipient's bank account. The bank must be FDIC insured. It is desirable that the bank be a member of the Federal Reserve System. The account must be interest bearing.

Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and the Indian Self-Determination Act (23 U.S.C. 450), grantees and subgrantees shall promptly, but at least quarterly,

remit interest earned on advances to the Department of Health and Human Services, Division of Payment Management (HHS/DPM). When submitting your checks, please include a detailed explanation which should include: reason for check (remittance of interest earned on HIDTA advance payments), check number, grantee name, grant number, interest period covered, and contact name and number.

Ms. Nicole Kelly
Division of Payment Management
Department of Health and Human Services
11400 Rockville Pike
Suite 700
Rockville, MD 20852

The grantee or subgrantee may keep interest amounts up to \$100 per year for administrative purposes. (21 CFR Section 1403.21i)

3. Reporting Requirements

Financial Status Reports (OMB Standard Form 269) will be required quarterly during the award period and at the end of the award **These forms shall be faxed to Phuong DeSear at 202-395-5176.** Performance reports will be required as specified in the Program Guidance.

Note that the final financial reports should be cumulative for the entire award period. Performance Reports: Due as specified in the Program Guidance.

**Special Conditions
HIDTA Grants**

The following special conditions are incorporated into each award document.

1. In order to provide for compatibility, integration, coordination, and cost effectiveness in the use, procurement, and operation of ADP systems, equipment, and software, recipients are encouraged and authorized to enter into joint purchase or service agreements on a reimbursable or nonreimbursable basis with other HIDTA award recipients. Award recipients are authorized and encouraged to enter into joint purchases or service agreements with other HIDTA award recipients.

2. No federal funds shall be used to supplant state or local funds that would otherwise be made available for project purposes.

3. The operating principles found in 28 CFR Part 23, which pertain to information collection and management or criminal intelligence systems, shall apply to any such systems supported by this award.

4. Prior to expenditure of confidential funds, the award recipient or subrecipient shall sign a certification indicating that he or she has read, understands, and agrees to abide by all of the conditions pertaining to confidential fund expenditures as set forth in Attachment B to the ONDCP Financial and Administrative Guide for Grants. This certification should be submitted to the Assistance Center.

5. The award recipient agrees to account for and use program income, including but not limited to asset forfeitures, in accordance with the "Common Rule" and the ONDCP Financial and Administrative Guide for Grants. Moreover, the use of program income must be consistent with the National Drug Control Strategy.

6. Where furniture has been approved in the budget, the recipient will make every effort to utilize existing State and local surplus property prior to the purchase of any furniture, including computer furniture or items of similar nature.

7. The award recipient may not use designated aircraft assigned to HIDTA-approved task operations and initiatives for the transport of VIP Executive(s) or similar circumstances not relating to the goals and objectives of state and local law enforcement programs.

8. The budget submitted with the proposal is approved.

Reprogramming between budget categories within the same agency and initiative requires the approval of the respective HIDTA Director and must be in accordance with procedures established by the Executive Committee.

Reprogramming of funds between agencies or initiatives requires the written approval of the ONDCP HIDTA Office, regardless of the dollar value of the reprogramming.

In all cases the recipient is responsible for maintaining detailed records of the reprogramming activities and

forwarding notification to your HIDTA Director regarding reprogramming activities as they occur.

9. The recipient agrees to comply with the organizational audit requirements of OMB Circular A-133, "Audits of State and Local Governments." The management letter must be submitted with the audit report. Audits must be submitted no later than thirteen (13) months after the close of the recipient organizations audited fiscal year. The submission of the audit report shall be as follows:

An original and one copy shall be sent to the cognizant Federal Agency. Also, a copy of the audit report shall be sent to **Executive Office of the President**, Office of National Drug Control Policy, 750 17th Street, NW, Washington DC 20503.
Attn: **Wendy Button, Room 541. Phone: 202-395-6792, Fax: 202-395-5176.**

10. The recipient agrees to submit operation reports as defined in the Current Year Program Guidance.

11. Equipment acquired under the grant program must be used by the recipient in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program, the equipment may be used in other activities supported by the Federal agency. The recipient may dispose of the original equipment when no longer needed or supported by the grantor agency.

Inventory lists must be supplied to the HIDTA Director to facilitate the sharing of equipment within and between the HDTAs. Items to be inventoried

include Communications, Computer & Related Equipment, Surveillance Equipment, Photo, Vehicles, Video, and Weapons.

12. The recipient will be permitted to designate funds that would be matched or shared; however, these matched or shared funds will not constitute an obligation on behalf of the recipient.

13. Budget item submissions for equipment and other contract items are accepted as best estimate only and are not deemed approved at that price. Recipients are required to assure such items are not currently available, are not duplicative or excessive, and should make market surveys and obtain the best prices available.

14. The recipient acknowledges that failure to submit an acceptable Equal Employment Opportunity Plan (if recipient is required to submit one pursuant to 28 CFR section 42.302), that is approved by the Office of Civil Rights, is a violation of its Certified Assurances and may result in the suspension of the drawdown of funds.

15. The recipient agrees to complete and keep on file, as appropriate, Immigration and Naturalization Service Employment Eligibility Verification Form (I-9). This form is to be used by recipients of federal funds to verify that persons are eligible to work in the United States.

16. The recipient agrees to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the

appearance of personal or organizational conflict of interest, or personal gain.

17. The recipient gives the awarding agency or the General Accountability Office, through any authorized representative, access to and the right to examine all paper or electronic records related to the grant.

RECIPIENT ACCEPTANCE OF SPECIAL CONDITIONS

Bob Doyle
Typed Name

Sheriff-Coroner
Title

/s/ Bob Doyle
(Signature)

4-12-05
Date

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FY 2005 - Los Angeles HIDTA

Approved Budget - Riverside County Sheriff's Department (15PLAP540Z)

Initiative - Inland Crackdown Allied Task Force

Resource Recipient - CA DOJ Bureau of Narcotics Enforcement - L.A.

Personnel Position	# Positions	Subtotal Personnel	Total
Administrative staff	-	-	
Analyst - Criminal	-	-	
Analyst - Intelligence	-	-	
Analyst - Program	-	-	
Attorney	-	-	
Coordinator	-	-	
Counselor	-	-	
Director	-	-	
Director - Deputy	-	-	
Director - Investigative	-	-	
Support Center	-	-	
Director - Demand	-	-	
Reduction	-	-	
Financial Manager	-	-	
Financial staff	-	-	
Information Technology	-	-	
Manager	-	-	
Information Technology	-	-	
staff	-	-	
Investigative - Law	-	-	
Enforcement Officer	-	-	
Investigative - support	-	-	
Paralegal & support	-	-	
Specialist	-	-	
Therapist	-	-	
Training Coordinator	-	-	

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Personnel Position	# Positions	Subtotal	Total Personnel
Training Staff	-	-	
2004 Reprogram Adjustment - Personnel		-	
		-	
Total Personnel			-

Fringe Benefits Name/Position		Subtotal	Total Benefits
Administrative staff	-	-	
Analyst - Criminal	-	-	
Analyst - Intelligence	-	-	
Analyst - Program	-	-	
Attorney	-	-	
Coordinator	-	-	
Counselor	-	-	
Director	-	-	
Director - Deputy	-	-	
Director- Investigative Support Center	-	-	
Director - Demand Reduction	-	-	
Financial Manager	-	-	
Financial staff	-	-	
Information Technology Manager	-	-	
Information Technology staff	-	-	
Investigative - Law Enforcement Officer	-	-	
Investigative - support	-	-	
Paralegal & support	-	-	
Specialist	-	-	
Therapist	-	-	

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Fringe Benefits Name/Position	Subtotal	Total Benefits
Training Coordinator -	-	
Training staff -	-	
Overtime -	-	
2004 Reprogram -	-	
Adjustment - Fringe -	-	
Total Fringe Benefits		-

Overtime Position	# Positions	Subtotal	Total Overtime
Investigative - Law Enforcement Officer -	-	220,100	
Support -	-	-	
2004 Reprogram -	-	-	
Adjustment - Overtime -	-	-	
Total Overtime			220,100

Travel Purpose	# Positions	Subtotal	Total Travel
Administrative -	-	-	
Investigative -	-	8,996	
Training -	-	-	
2004 Reprogram -	-	-	
Adjustment - Travel -	-	-	
Total Travel			8,996

Facilities Description	# Leases	Subtotal	Total Facilities
Improvements -	-	-	
Lease -	-	-	
Support -	-	-	

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Facilities Description	# Leases	Subtotal	Total Facilities
Utilities	-	-	
2004 Reprogram Adjustment - Facilities	-	-	
Total Facilities			-

Services Description and Quantity	# Services	Subtotal	Total Services
Aviation	-	-	
Communications - data lines	-	-	
Communications - mobile phones & pagers	-	27,600	
Communications - office phones	-	-	
Contractor - Administrative staff	-	-	
Contractor - Analyst - Criminal	-	-	
Contractor - Analyst - Intelligence	-	-	
Contractor - Analyst - Program	-	-	
Contractor - Attorney	-	-	
Contractor Coordinator	-	-	
Contractor - Counselor	-	-	
Contractor - Director	-	-	
Contractor - Director - Deputy	-	-	
Contractor - Director - ISC	-	-	

Services Description and Quantity	# Services	Subtotal	Total Services
Contractor - Director - Demand Reduction	-	-	
Contractor - Financial Manager	-	-	
Contractor - Financial staff	-	-	
Contractor - Information Technology Manager	-	-	
Contractor - Information Technology staff	-	-	
Contractor - Investigative - LEO	-	-	
Contractor - Investigative - support	-	-	
Contractor - Paralegal & support	-	-	
Contractor - Specialist	-	-	
Contractor - Therapist	-	-	
Contractor - Training Coordinator	-	-	
Contractor - Training staff	-	-	
Deconfliction services	-	-	
Equipment rentals	-	-	
Insurance	-	-	
Insurance - Director's liability	-	-	
Investigative services	-	-	
Printing & document support	-	-	
Service contracts	-	-	

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Services			
Description and Quantity	# Services	Subtotal	Total Services
Service contracts: treatment/prevention/demand red		-	
Shipping & postage	-	-	
Software - maintenance	-	-	
Subscriptions - database	-	-	
Subscriptions - publications	-	-	
Training	-	-	
Vehicle allowance	-	-	
Vehicle lease - passenger	-	-	
Vehicle lease - specialty	-	-	
2004 Reprogram Adjustment - Services		-	
		-	
Total Services			27,600

Equipment			
Description	# Equipment	Subtotal	Total Equipment
Communications - data lines	-	-	
Communications - mobile phones & pagers	-	-	
Communications - office phones	-	-	
Communications - radios	-	-	
Computers - desktop, laptop & notebook	-	-	

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Equipment Description	# Equipment	Subtotal	Total Equipment
Computers - networking devices	-	-	
Computers - peripherals & printers	-	-	
Office - furniture	-	-	
Office - machines	-	-	
Technical investigative equipment	-	-	
Technical investigative equipment - audio	-	-	
Technical investigative equipment - visual	-	-	
Vehicles - passenger	-	-	
2004 Reprogram Adjustment - Equipment		-	
Total Equipment			-

Supplies Description	Subtotal	Total Supplies
Investigative/ operational	100,080	
Treatment, prevention, demand reduction	-	
Office	-	
Software - licenses	-	
2004 Reprogram Adjustment - Supplies	-	
Total		100,080

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Other Description	Subtotal	Total Other
Administrative costs	-	
PE/PI/PS	-	
2004 Reprogram	-	
Adjustment - Other	-	
	-	
Total		-

Total Budget	356,776
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FY 2005 - Los Angeles HIDTA
Approved Budget - Riverside County Sheriff's
Department (15PLAP:40Z)
Initiative - Inland Narcotics Clearing House
Resource Recipient - Inland Narcotics Clearing
House (INCH)

Personnel Position	# Positions	Subtotal Personnel	Total
Administrative staff	-	-	
Analyst - Criminal	-	-	
Analyst - Intelligence	-	-	
Analyst - Program	-	-	
Attorney	-	-	
Coordinator	-	-	
Counselor	-	-	
Director	-	-	
Director - Deputy	-	-	
Director- Investigative Support Center	-	-	
Director - Demand Reduction	-	-	
Financial Manager	-	-	
Financial staff	-	-	
Information Technology Manager	-	-	
Information Technology staff	-	-	
Investigative - Law Enforcement Officer	-	-	
Investigative - support	-	-	
Paralegal & support	-	-	
Specialist	-	-	
Therapist	-	-	
Training Coordinator	-	-	

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Personnel Position	# Positions	Subtotal	Total Personnel
Training Staff	-	-	
2004 Reprogram Adjustment - Personnel		-	
		-	
Total Personnel			-

Fringe Benefits Name/Position		Subtotal	Total Benefits
Administrative staff	-	-	
Analyst - Criminal	-	-	
Analyst - Intelligence	-	-	
Analyst - Program	-	-	
Attorney	-	-	
Coordinator	-	-	
Counselor	-	-	
Director	-	-	
Director - Deputy	-	-	
Director- Investigative Support Center	-	-	
Director - Demand Reduction	-	-	
Financial Manager	-	-	
Financial staff	-	-	
Information Technology Manager	-	-	
Information Technology staff	-	-	
Investigative - Law Enforcement Officer	-	-	
Investigative - support	-	-	
Paralegal & support	-	-	
Specialist	-	-	

Fringe Benefits Name/Position	Subtotal	Total Benefits
Therapist	-	-
Training Coordinator	-	-
Training staff	-	-
Overtime	-	-
2004 Reprogram Adjustment - Fringe	-	-
Total Fringe Benefits		-

Overtime Position	# Positions	Subtotal	Total Overtime
Investigative - Law Enforcement Officer	-	-	-
Support	-	-	-
2004 Reprogram Adjustment - Overtime		-	-
Total Overtime			-

Travel Purpose	# Positions	Subtotal	Total Travel
Administrative	-	-	-
Investigative	-	13,014	-
Training	-	-	-
2004 Reprogram Adjustment - Travel		-	-
Total Travel			13,014

Facilities Description	# Leases	Subtotal	Total Facilities
Improvements		-	-
Lease		-	-

Facilities Description	# Leases	Subtotal	Total Facilities
Support		-	
Utilities		-	
2004 Reprogram Adjustment - Facilities		-	
		-	
Total Facilities			-

Services Description and Quantity	# Services	Subtotal	Total Services
Aviation	-	-	
Communications - data lines	-	15,768	
Communications - mobile phones & pagers	-	-	
Communications - office phones	-	-	
Contractor - Administrative staff	-	-	
Contractor - Analyst - Criminal	-	-	
Contractor - Analyst - Intelligence	-	-	
Contractor - Analyst - Program	-	-	
Contractor - Attorney	-	-	
Contractor - Coordinator	-	-	
Contractor - Counselor	-	-	
Contractor - Director	-	-	
Contractor - Director - Deputy	-	-	

Services Description and Quantity	# Services	Subtotal	Total Services
Contractor - Director - ISC	-	-	
Contractor - Director - Demand Reduction	-	-	
Contractor - Financial Manager	-	-	
Contractor - Financial staff	-	-	
Contractor - Information Technology Manager	-	-	
Contractor - Information Technology staff	-	-	
Contractor - Investigative - LEO	-	-	
Contractor - Investigative - support	-	-	
Contractor - Paralegal & support	-	-	
Contractor - Specialist	-	-	
Contractor - Therapist	-	-	
Contractor - Training Coordinator	-	-	
Contractor - Training staff	-	-	
Deconfliction services	-	-	
Equipment rentals	-	-	
Insurance	-	-	
Insurance - Director's liability	-	-	
Investigative services	-	-	
Printing & document support	-	-	

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Services Description and Quantity	# Services	Subtotal	Total Services
Service contracts	-	31,410	
Service contracts: treatment/prevention/ demand red		-	
Shipping & postage	-	8,160	
Software - maintenance	-	-	
Subscriptions - database	-	26,760	
Subscriptions - publications	-	-	
Training	-	10,800	
Vehicle allowance	-	-	
Vehicle lease - passenger	-	-	
Vehicle lease - specialty	-	-	
2004 Reprogram Adjustment - Services		-	
Total Services			92,898

Equipment Description	# Equipment	Subtotal	Total Equipment
Communications - data lines	-	-	
Communications - mobile phones & pagers	-	-	
Communications - office phones	-	-	
Communications - radios	-	-	

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Equipment Description	# Equipment	Subtotal	Total Equipment
Computers - desktop, laptop & notebook	-	-	
Computers - networking devices	-	-	
Computers - peripherals & printers	-	9,048	
Office - furniture	-	-	
Office - machines	-	-	
Technical investigative equipment	-	-	
Technical investigative equipment - audio	-	-	
Technical investigative equipment - visual	-	-	
Vehicles - passenger	-	-	
2004 Reprogram Adjustment - Equipment		-	
Total Equipment			9,048

Supplies Description	Subtotal	Total Supplies
Investigative/operational	1,500	
Treatment, prevention, demand reduction	-	
Office	14,520	
Software - licenses	19,020	
2004 Reprogram Adjustment - Supplies	-	
Total		35,040

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Other Description	Subtotal	Total Other
Administrative costs	-	
PE/PI/PS	-	
2004 Reprogram	-	
Adjustment - Other	-	
Total		-

Total Budget	150,000
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FY 2005 - Los Angeles HIDTA
Approved Budget - Riverside County Sheriff's
Department (15PLAP540Z)
Initiative - RMTF (Riverside/San Bernardino)
Resource Recipient - Inland Narcotics Clearing
House (INCH)

Personnel Position	# Positions	Subtotal	Total Personnel
Administrative staff	1.00	29,554	
Analyst - Criminal	-	-	
Analyst - Intelligence	-	-	
Analyst - Program	-	-	
Attorney	-	-	
Coordinator	-	-	
Counselor	-	-	
Director	-	-	
Director - Deputy	-	-	
Director- Investigative	-	-	
Support Center	-	-	
Director - Demand	-	-	
Reduction	-	-	
Financial Manager	-	-	
Financial staff	-	-	
Information Technology	-	-	
Manager	-	-	
Information Technology	1.00	72,409	
staff			
Investigative - Law	-	-	
Enforcement Officer	-	-	
Investigative - support	-	-	
Paralegal & support	-	-	
Specialist	-	-	
Therapist	-	-	
Training Coordinator	-	-	

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Personnel Position	# Positions	Subtotal	Total Personnel
Training Staff	-	-	
2004 Reprogram Adjustment - Personnel		-	
		-	
Total Personnel			101,963

Fringe Benefits Name/Position		Subtotal	Total Benefits
Administrative staff	13,586.00	13,586	
Analyst - Criminal	-	-	
Analyst - Intelligence	-	-	
Analyst - Program	-	-	
Attorney	-	-	
Coordinator	-	-	
Counselor	-	-	
Director	-	-	
Director - Deputy	-	-	
Director- Investigative Support Center	-	-	
Director - Demand Reduction	-	-	
Financial Manager	-	-	
Financial staff	-	-	
Information Technology Manager	-	-	
Information Technology staff	24,609.00	24,609	
Investigative - Law Enforcement Officer	-	-	
Investigative - support	-	-	
Paralegal & support	-	-	
Specialist	-	-	

Fringe Benefits Name/Position	Subtotal	Total Benefits
Therapist	-	-
Training Coordinator	-	-
Training staff	-	-
Overtime	-	-
2004 Reprogram	-	-
Adjustment - Fringe	-	-
Total Fringe Benefits		38,195

Overtime Position	# Positions	Subtotal	Total Overtime
Investigative - Law Enforcement Officer	-	-	-
Support	-	-	-
2004 Reprogram	-	-	-
Adjustment - Overtime	-	-	-
Total Overtime			

Travel Purpose	# Positions	Subtotal	Total Travel
Administrative	-	-	-
Investigative	-	4,700	-
Training	-	-	-
2004 Reprogram	-	-	-
Adjustment - Travel	-	-	-
Total Travel			4,700

Facilities Description	# Leases	Subtotal	Total Facilities
Improvements	-	-	-
Lease	-	-	-

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Facilities Description	# Leases	Subtotal	Total Facilities
Support		-	
Utilities		-	
2004 Reprogram Adjustment - Facilities		-	
		-	
Total Facilities			-

Services Description and Quantity	# Services	Subtotal	Total Services
Aviation	-	-	
Communications - data lines	-	-	
Communications - mobile phones & pagers	-	-	
Communications - office phones	-	-	
Contractor - Administrative staff	-	-	
Contractor - Analyst - Criminal	-	-	
Contractor - Analyst - Intelligence	-	138,744	
Contractor - Analyst - Program	-	-	
Contractor - Attorney	-	-	
Contractor - Coordinator	-	-	
Contractor - Counselor	-	-	
Contractor - Director	-	-	
Contractor - Director - Deputy	-	-	

Services Description and Quantity	# Services	Subtotal	Total Services
Contractor - Director - ISC	-	-	
Contractor - Director - Demand Reduction	-	-	
Contractor - Financial Manager	-	-	
Contractor - Financial staff	-	-	
Contractor - Information Technology Manager	-	-	
Contractor - Information Technology staff	-	-	
Contractor - Investigative - LEO	-	-	
Contractor - Investigative - support	-	-	
Contractor - Paralegal & support	-	-	
Contractor - Specialist	-	-	
Contractor - Therapist	-	-	
Contractor - Training Coordinator	-	-	
Contractor - Training staff	-	-	
Deconfliction services	-	-	
Equipment rentals	-	-	
Insurance	-	-	
Insurance - Director's liability	-	-	
Investigative services	-	-	
Printing & document support	-	-	

Services Description and Quantity	# Services	Subtotal	Total Services
Service contracts	-	-	
Service contracts: treatment/prevention/ demand red		-	
Shipping & postage	-	-	
Software - maintenance	-	-	
Subscriptions - database	-	-	
Subscriptions - publications	-	-	
Training	-	1,800	
Vehicle allowance	-	-	
Vehicle lease - passenger	-	-	
Vehicle lease - specialty	-	-	
2004 Reprogram Adjustment - Services		-	
Total Services			140,544

Equipment Description	# Equipment	Subtotal	Total Equipment
Communications - data lines	-	-	
Communications - mobile phones & pagers	-	-	
Communications - office phones		-	
Communications - radios		-	

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Equipment Description	# Equipment	Subtotal	Total Equipment
Computers - desktop, laptop & notebook	-	-	
Computers - networking devices	-	-	
Computers - peripherals & printers	-	-	
Office - furniture	-	-	
Office - machines	-	-	
Technical investigative equipment	-	-	
Technical investigative equipment - audio	-	-	
Technical investigative equipment - visual	-	-	
Vehicles - passenger	-	-	
2004 Reprogram Adjustment - Equipment		-	
		-	
Total Equipment			-

Supplies Description	Subtotal	Total Supplies
Investigative/ operational	-	
Treatment, prevention, demand reduction	-	
Office	-	
Software - licenses	-	
2004 Reprogram Adjustment - Supplies	-	
	-	
Total		-

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Other Description	Subtotal	Total Other
Administrative costs	-	
PE/PI/PS	-	
2001 Reprogram	-	
Adjustment - Other	-	
	-	
Total		-

Total Budget	285,402
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FY 2005 - Los Angeles HIDTA**Approved Budget - Riverside County Sheriff's
Department (15PLAP540Z)****Initiative - RMTF (Riverside/San Bernardino)****Resource Recipient - Riverside County Sheriff's
Department**

Personnel Position	# Positions	Subtotal	Total Personnel
Administrative staff	-	-	
Analyst - Criminal	-	-	
Analyst - Intelligence	-	-	
Analyst - Program	-	-	
Attorney	-	-	
Coordinator	-	-	
Counselor	-	-	
Director	-	-	
Director - Deputy	-	-	
Director- Investigative Support Center	-	-	
Director - Demand Reduction	-	-	
Financial Manager	-	-	
Financial staff	-	-	
Information Technology Manager	-	-	
Information Technology staff	-	-	
Investigative - Law Enforcement Officer	-	-	
Investigative - support	-	-	
Paralegal & support	-	-	
Specialist	-	-	
Therapist	-	-	
Training Coordinator	-	-	

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Personnel Position	# Positions	Subtotal	Total Personnel
Training Staff	-	-	
2004 Reprogram Adjustment - Personnel		-	
		-	
Total Personnel			-

Fringe Benefits Name/Position		Subtotal	Total Benefits
Administrative staff	-	-	
Analyst - Criminal	-	-	
Analyst - Intelligence	-	-	
Analyst - Program	-	-	
Attorney	-	-	
Coordinator	-	-	
Counselor	-	-	
Director	-	-	
Director - Deputy	-	-	
Director- Investigative Support Center	-	-	
Director - Demand Reduction	-	-	
Financial Manager	-	-	
Financial staff	-	-	
Information Technology Manager	-	-	
Information Technology staff	-	-	
Investigative - Law Enforcement Officer	-	-	
Investigative - support	-	-	
Paralegal & support	-	-	
Specialist	-	-	

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Fringe Benefits Name/Position	Subtotal	Total Benefits
Therapist	-	-
Training Coordinator	-	-
Training staff	-	-
Overtime	-	-
2004 Reprogram Adjustment - Fringe	-	-
Total Fringe Benefits		-

Overtime Position	# Positions	Subtotal	Total Overtime
Investigative - Law Enforcement Officer	-	231,170	
Support	-	-	
2004 Reprogram Adjustment - Overtime		-	
Total Overtime			231,170

Travel Purpose	# Positions	Subtotal	Total Travel
Administrative	-	-	
Investigative	-	18,004	
Training	-	-	
2004 Reprogram Adjustment - Travel		-	
Total Travel			18,004

Facilities Description	# Leases	Subtotal	Total Facilities
Improvements		-	
Lease	-	-	

Facilities Description	# Leases	Subtotal	Total Facilities
Support		-	
Utilities		-	
2004 Reprogram Adjustment - Facilities		-	
		-	
Total Facilities			-

Services Description and Quantity	# Services	Subtotal	Total Services
Aviation	-	-	
Communications - data lines	-	-	
Communications - mobile phones & pagers	-	49,200	
Communications - office phones	-	-	
Contractor - Administrative staff	-	-	
Contractor - Analyst - Criminal	-	-	
Contractor - Analyst - Intelligence	-	-	
Contractor - Analyst - Program	-	-	
Contractor - Attorney	-	-	
Contractor - Coordinator	-	-	
Contractor - Counselor	-	-	
Contractor Director	-	-	
Contractor - Director - Deputy	-	-	

Services Description and Quantity	# Services	Subtotal	Total Services
Contractor - Director - ISC	-	-	
Contractor - Director - Demand Reduction	-	-	
Contractor - Financial Manager	-	-	
Contractor - Financial staff	-	-	
Contractor - Information Technology Manager	-	-	
Contractor - Information Technology staff	-	-	
Contractor - Investigative - LEO	-	-	
Contractor - Investigative - support	-	-	
Contractor - Paralegal & support	-	-	
Contractor - Specialist	-	-	
Contractor - Therapist	-	-	
Contractor - Training Coordinator	-	-	
Contractor - Training staff	-	-	
Deconfliction services	-	-	
Equipment rentals	-	-	
Insurance	-	-	
Insurance - Director's liability	-	-	
Investigative services	-	-	
Printing & document support	-	-	

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Services Description and Quantity	# Services	Subtotal	Total Services
Service contracts	-	-	
Service contracts: treatment/prevention/ demand red		-	
Shipping & postage	-	840	
Software - maintenance	-	-	
Subscriptions - database	-	-	
Subscriptions - publications	-	-	
Training	-	3,000	
Vehicle allowance	-	-	
Vehicle lease - passenger	-	-	
Vehicle lease - specialty	-	2,004	
2004 Reprogram Adjustment - Services		-	
		-	
Total Services			55,044

Equipment Description	# Equipment	Subtotal	Total Equipment
Communications - data lines	-	-	
Communications - mobile phones & pagers	-	-	
Communications - office phones	-	-	
Communications radios	-	-	

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Equipment Description	# Equipment	Subtotal	Total Equipment
Computers - desktop, laptop & notebook	-	-	
Computers - networking devices	-	-	
Computers - peripherals & printers	-	-	
Office - furniture	-	-	
Office - machines	-	-	
Technical investigative equipment	-	-	
Technical investigative equipment - audio	-	-	
Technical investigative equipment - visual	-	-	
Vehicles - passenger	-	-	
2004 Reprogram Adjustment - Equipment		-	
Total Equipment		-	-

Supplies Description	Subtotal	Total Supplies
Investigative/operational	10,380	
Treatment, prevention, demand reduction	-	
Office	-	
Software - licenses	-	
2004 Reprogram Adjustment - Supplies	-	
Total		10,380

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Other	Subtotal	Total
Description		Other
Administrative costs	-	
PE/PI/PS	-	
2004 Reprogram	-	
Adjustment - Other		
	-	
Total		-

Total Budget	314,598
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FY 2005 - Los Angeles HIDTA
Approved Budget - Riverside County Sheriff's
Department (15PLAP540Z)
Initiative - RMTF (Riverside/San Bernardino)
Resource Recipient - San Bernardino County
Sheriff's Department

Personnel Position	# Positions	Subtotal Personnel	Total
Administrative staff	-	-	
Analyst - Criminal	-	-	
Analyst - Intelligence	-	-	
Analyst - Program	-	-	
Attorney	-	-	
Coordinator	-	-	
Counselor	-	-	
Director	-	-	
Director - Deputy	-	-	
Director- Investigative	-	-	
Support Center			
Director - Demand	-	-	
Reduction			
Financial Manager	-	-	
Financial staff	-	-	
Information Technology	-	-	
Manager			
Information Technology	-	-	
staff			
Investigative - Law	-	-	
Enforcement Officer			
Investigative - support	-	-	
Paralegal & support	-	-	
Specialist	-	-	
Therapist			
Training Coordinator	-	-	

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Personnel Position	# Positions	Subtotal	Total Personnel
Training Staff	-	-	
2004 Reprogram Adjustment - Personnel		-	
		-	
Total Personnel			-

Fringe Benefits Name/Position	Subtotal	Total Benefits
Administrative staff	-	-
Analyst - Criminal	-	-
Analyst - Intelligence	-	-
Analyst - Program	-	-
Attorney	-	-
Coordinator	-	-
Counselor	-	-
Director	-	-
Director - Deputy	-	-
Director- Investigative Support Center	-	-
Director - Demand Reduction	-	-
Financial Manager	-	-
Financial staff	-	-
Information Technology Manager	-	-
Information Technology staff	-	-
Investigative - Law Enforcement Officer	-	-
Investigative - support	-	-
Paralegal & support	-	-
Specialist	-	-

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Fringe Benefits Name/Position	Subtotal	Total Benefits
Therapist	-	-
Training Coordinator	-	-
Training staff	-	-
Overtime	-	-
2004 Reprogram Adjustment - Fringe	-	-
Total Fringe Benefits		-

Overtime Position	# Positions	Subtotal	Total Overtime
Investigative - Law Enforcement Officer	-	439,070	
Support	-	-	
2004 Reprogram Adjustment - Overtime		-	
Total Overtime			439,070

Travel Purpose	# Positions	Subtotal	Total Travel
Administrative	-	-	
Investigative	-	15,983	
Training	-	-	
2004 Reprogram Adjustment - Travel		-	
Total Travel			15,988

Facilities Description	# Leases	Subtotal	Total Facilities
Improvements		-	
Lease	-	-	

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Facilities Description	# Leases	Subtotal	Total Facilities
Support		-	
Utilities		-	
2004 Reprogram Adjustment - Facilities		-	
		-	
Total Facilities			-

Services Description and Quantity	# Services	Subtotal	Total Services
Aviation	-	-	
Communications - data lines	-	-	
Communications - mobile phones & pagers	-	60,000	
Communications - office phones	-	-	
Contractor - Administrative staff	-	-	
Contractor - Analyst - Criminal	-	-	
Contractor - Analyst - Intelligence	-	-	
Contractor - Analyst - Program	-	-	
Contractor - Attorney	-	-	
Contractor - Coordinator	-	-	
Contractor - Counselor	-	-	
Contractor - Director	-	-	
Contractor - Director - Deputy	-	-	

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Services Description and Quantity	# Services	Subtotal	Total Services
Contractor - Director - ISC	-	-	
Contractor - Director - Demand Reduction	-	-	
Contractor - Financial Manager	-	-	
Contractor - Financial staff	-	-	
Contractor - Information Technology Manager	-	-	
Contractor - Information Technology staff	-	-	
Contractor - Investigative - LEO	-	-	
Contractor - Investigative - support	-	-	
Contractor - Paralegal & support	-	-	
Contractor - Specialist	-	-	
Contractor - Therapist	-	-	
Contractor - Training Coordinator	-	-	
Contractor - Training staff	-	-	
Deconfliction services	-	-	
Equipment rentals	-	-	
Insurance	-	-	
Insurance - Director's liability	-	-	
Investigative services	-	-	
Printing & document support	-	-	

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Services Description and Quantity	# Services	Subtotal	Total Services
Service contracts	-	-	
Service contracts: treatment/prevention/ demand red		-	
Shipping & postage	-	-	
Software - maintenance	-	-	
Subscriptions - database	-	-	
Subscriptions - publications	-	-	
Training	-	13,200	
Vehicle allowance	-	-	
Vehicle lease - passenger	-	-	
Vehicle lease - specialty	-	-	
2004 Reprogram Adjustment - Services		-	
		-	
Total Services			73,200

Equipment Description	# Equipment	Subtotal	Total Equipment
Communications - data lines	-	-	
Communications - mobile phones & pagers	-	-	
Communications - office phones	-	-	
Communications - radios	-	-	

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Equipment Description	# Equipment	Subtotal	Total Equipment
Computers - desktop, laptop & notebook	-	-	
Computers - networking devices	-	-	
Computers - peripherals & printers	-	-	
Office - furniture	-	-	
Office - machines	-	-	
Technical investigative equipment	-	66,750	
Technical investigative equipment - audio	-	-	
Technical investigative equipment - visual	-	-	
Vehicles - passenger	-	-	
2004 Reprogram Adjustment - Equipment		-	
Total Equipment			66,750

Supplies Description	Subtotal	Total Supplies
Investigative/ operational	79,992	
Treatment, prevention, demand reduction	-	
Office	-	
Software - licenses	-	
2004 Reprogram Adjustment - Supplies	-	
Total		79,992

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Other Description	Subtotal	Total Other
Administrative costs	-	
PE/PI/PS	-	
2004 Reprogram	-	
Adjustment - Other	-	
Total		-

Total Budget	675,000
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EXHIBIT K

**REPORT/RECOMMENDATION TO THE
BOARD OF SUPERVISORS OF
SAN BERNARDINO COUNTY, CALIFORNIA
AND RECORD OF ACTION**

May 31, 2005

Original: Contracts Unit w/Award

Copy: Lt. Quesada w/Award

Sandy Hosch w/Award

Nancy Clark

Carolyn Bondoc

File

May 3, 2005

FROM: GARY PENROD, Sheriff-Coroner
Sheriff's Department

**SUBJECT: GRANT AWARD FOR THE INLAND
REGIONAL NARCOTICS
ENFORCEMENT TEAM (IRNET)
FROM THE OFFICE OF NATIONAL
DRUG CONTROL POLICY - GRANT
AWARD NO. I5PLAP530Z**

RECOMMENDATION: Accept Inland Regional Narcotics Enforcement Team (IRNET) Grant Award No. I5PLAP530Z (**Agreement No. 05-287**) from the Office of National Drug Control Policy (ONDCP), in the amount of \$640,886 for the period January 1, 2005 through December 31, 2005.

BACKGROUND INFORMATION: IRNET is a joint effort between the San Bernardino County

Sheriff's Department and member agencies designed to target, investigate and prosecute major drug trafficking organizations. IRNET received a HIDTA (High Intensity Drug Trafficking Area) grant award from the ONDCP, in the amount of \$640,886 for the period of January 1 through December 31, 2005. This grant award is the continuation of a grant that was first funded in 1997- 98 and is evaluated annually by ONDCP for renewal.

San Bernardino County's portion of the grant award is \$584,309 and will fund IRNET's overtime and operating expenses (building lease, telephone and radio expense, vehicle repair and maintenance, equipment purchases, travel expense, etc). The remaining \$56,577 will be held in a trust account and will be paid to the member law enforcement agencies for the reimbursement of overtime costs associated with this project. Riverside Sheriff's Department, Redlands Police department, San Bernardino Police Department and Alcohol Beverage Control each have one member on the task force and the remaining 14 members are from the Department.

The full amount of the grant award, both the County's and member agencies' portions, must be accepted by the Board of Supervisors, acting as the local government for the lead agency (San Bernardino County Sheriff's Department). No matching funds are required.

REVIEW AND APPROVAL BY OTHERS: This item has been reviewed and approved as to form by County Counsel (Kevin Norris, Deputy County Counsel, 387-5441) on April 21, 2005, and has been reviewed by the

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County Administrative Office (Laurie Rozko, Administrative Analyst, 387-8997) on April 21, 2005.

FINANCIAL IMPACT: A trust fund has been established with the Auditor/Controller's Office to deposit the member law enforcement agencies' portion of the grant revenue, in the amount of \$56,577. The County's portion, in the amount of \$684,309, was included in the Sheriff's 2004-05 and Proposed 2005-06 budgets (SCF-SHR and SCT-SHR). There is no local cost impact related to this item.

SUPERVISORIAL DISTRICT(S): All

PRESENTER: Dennis J. Casey, Captain, 387-3637

Min05-03 c ImetHIDTA05

Page 1 of 1

[SEAL OF THE BOARD OF SUPERVISORS,
SAN BERNARDINO COUNTY, CA]

Record of Action of the Board of Supervisors
Agreement No. 05-287

APPROVED (CONSENT CALENDAR)
BOARD OF SUPERVISORS
COUNTY OF SAN BERNARDINO

Motion	<u>AYE</u>	<u>SECOND</u>	<u>AYE</u>	<u>MOVE</u>	<u>AYE</u>
	1	2	3	4	5

J. RENEE BASTIAN, CLERK OF THE BOARD

BY /s/ Tracy L. ||

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DATED: May 3, 2005

ITEM 069

cc: Sheriffs Dept.-Casey w/agree.
Contractor c/o dept. w/agree.
IDS-w/agree
A/C-R-w/agree.
Risk Management
CC-Norris
CAO-Rozko
Sheriffs Dept.-Penrod
File- w/agree.

tlh

Rev 07/97

[OFFICIAL SEAL
of the County of
San Bernardino]

County of San Bernardino

FAS

CONTRACT TRANSMITTAL

FOR COUNTY USE ONLY

X	New	Vendor Code	SC	SHR	A	Contract Number 05-287
	Change					
	Cancel					
County Department SHERIFF		Dept. SHR		Orgn. SHR		Contractor's License No.
County Department Contract Representative DENNIS J. CASEY, CAPTAIN		Telephone 387-0640		Total Contract Amount \$640,886		
Contract Type <input checked="" type="checkbox"/> Revenue <input type="checkbox"/> Encumbered <input type="checkbox"/> Unencumbered <input type="checkbox"/> Other:						
If not encumbered or revenue contract type, provide reason: _____						

Commodity Code		Contract Start Date		Contract End Date	Original Amount	Amendment Amount
		01/01/05		12/31/05	\$640,886	
Fund SCF	Dept. SIIR	Organization SHR	Appr.	Obj/Rev Source 9970	GRC/PROJ/ JOB No. HIDTA05	Amount
Fund	Dept	Organization	Appr.	Obj/Rev Source	GRC/PROJ/ JOB No.	Amount
Fund	Dept	Organization	Appr.	Obj/Rev Source	GRC/PROJ/ JOB No.	Amount
Project name		Estimated Payment Total by Fiscal Year				
2005 HIDTA Award		FY	Amount	I/D	FY	Amount I/D
(IRNET)		—	—	—	—	—
		—	—	—	—	—
		—	—	—	—	—

CONTRACTOR Office of National Drug Control Policy,
National HIDTA Assistance Center

Federal ID No. or Social Security No. _____

Contractor's Representative Phuong DeSear _____

Address 11200 NW 20th Street, Suite 100, Miami, FL
33172 Phone (202) 395-6739

Nature of Contract: *(Briefly describe the general terms of the contract)*

IRNET is a joint effort between the San Bernardino County Sheriff's Department and member agencies designed to target, investigate and prosecute major drug trafficking organizations. Riverside Sheriff's Department, Redlands Police Department, San Bernardino Police Department and Alcohol Beverage Control each have one member on the task force and the remaining 14 members are from the Department. IRNET received the HIDTA (High Intensity Drug Trafficking Area) grant award, in the amount of \$640,886 from the ONDCP for the period of January 1 through December, 31 2005. The County's portion of the grant award is \$584,309 and will fund IRNET's overtime and operating expenses (building lease, telephone and radio expense, vehicle repair and maintenance, equipment purchases, travel expenses, etc.). The remaining \$56,577 will be held in a trust account and will be paid to the member law enforcement agencies for the reimbursement of overtime costs associated with this project. San Bernardino County Sheriff's Department, as the lead agency, must submit the application to the County Board of Supervisors for approval for the County and

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the member agencies. No matching funds are required.

CB CONImetHIDTAaward2005

ONDCP - GRANT AWARD NO. I5PLAP530Z

(Attach this transmittal to all contracts not prepared on the "Standard Contract" form.)

Approved as to Legal Form (sign in blue ink)

► /s/

County Counsel, by Kevin L. Norris, Deputy

Date 4/21/05

Reviewed as to Contract Compliance

►

Date _____

Presented to BOS for Signature

► /s/

Department Head

Date 4/26/05

Auditor/Controller-Recorder Use Only

Contract Database <input type="checkbox"/> FAS
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Input Date	Keyed By
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THIS IS NOT A CONTRACT
THIS IS A COVER
TRANSMITTAL ONLY

**Executive Office of the President
Office of National Drug Control Policy**

Award

Grant

Page 1 of 6

1. Recipient Name and Address

San Bernardino County Sheriff's Department
655 East 3rd Street
San Bernardino, CA 92415

1A. Recipient IRS/Vendor No.

2. Subrecipient Name and Address

2A. Subrecipient IRS/Vendor No.

3. Project Title

Inland Regional Narcotics Enforcement Team
(IRNET)

4. Award Number: I5PLAP530Z

5. Project Period: 01/01/05 to 12/31/05

Budget Period: 01/01/05 to 12/31/05

6. Date: 04/06/05

7. Action

Initial: ☐ X

Supplemental: ☐

8. Supplemental Number

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- 9. Previous Award Amount
- 10. Amount of This Award **\$640,886.00**
- 11. Total Award **\$640,886.00**
- 12. Special Conditions

The above Grant is approved
subject to such conditions or
limitations as are set forth on the
attached 5 page(s).

- 13. Statutory Authority for Grant: Public Law 108-447

**AGENCY APPROVAL/
RECIPIENT ACCEPTANCE**

- 14. Typed Name and Title of Approving
ONDCP Official

Joseph D. Keefe
Office of National Drug Control Policy

- 15. Typed Name and Title of Authorized Recipient
Official

Sheriff Gary Penrod
San Bernardino County Sheriff's Department

- 16. Signature of Approving ONDCP Official

/s/ Joseph D. Keefe

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17. Signature of Authorized Recipient Date

/s/ Gary S. Penrod

Agency Use Only

18. Accounting Classification Code

19. HIDTA AWARD

Award Recipient: San Bernardino County Sheriff's
Department

HIDTA: Los Angeles

Initiative: Inland Regional Narcotics Enforcement
Team (Irnet)

Project Contact: Mr. Roger Bass

Award Amount: \$640,886.00

Award Period: 1/1/2005 to 12/31/2005

ONDCP Contact:

All requests for payment and inquiries should be
submitted to:

The National HIDTA Assistance Center
11200 NW 20th Street
Suite 100
Miami, FL 33 172
Phone: 305-715-7600

A. Conditions

1. The award is based on the detail budget attached to the application submitted for this initiative. This is your approved budget for the initiative and any deviation must comply with the reprogramming requirements as set forth in the ONDCP Guidelines.

B. General Provisions

1. This award is subject to:

- a. the Uniform Administrative Requirements for Grants and Grants to State and Local Governments, also known as the "Common Rule",
- b. the Certifications Regarding Lobbying, Debarment, Suspension and Other Responsibility Matters, Drug-Free Workplace Requirements; Federal Debt Status, and Nondiscrimination Statutes And Implementing Regulations.
- c. the audit requirements of OMB Circular A-133,
- d. the cost principles contained in OMB Circular A-87, and
- e. the administrative guidelines contained in ONDCP's Financial and Administrative Guidelines.

2. Payment Basis

Request for Advance or Reimbursement shall be made using the Division of Payment Management System (www.dpm.psc.gov). Copies of invoices, payroll registers, and canceled checks must accompany the payment confirmation number to provide

documentation for the reimbursement request. Request for advances will be accompanied by detail specifying the obligation. Documentation of how the advance was spent must be submitted before another advance or reimbursement can be requested.

Payments will be made via Electronic Fund Transfer to the award recipient's bank account. The bank must be FDIC insured. It is desirable that the bank be a member of the Federal Reserve System. The account must be interest bearing.

Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and the Indian Self-Determination Act (23 U.S.C. 450), grantees and subgrantees shall promptly, but at least quarterly, remit interest earned on advances to the Department of Health and Human Services, Division of Payment Management (HHS/DPM). When submitting your checks, please include a detailed explanation which should include: reason for check (remittance of interest earned on HIDTA advance payments), check number, grantee name, grant number, interest period covered, and contact name and number.

Ms. Nicole Kelly
Division of Payment Management
Department of Health and Human Services
11400 Rockville Pike
Suite 700
Rockville, MD 20852

The grantee or subgrantee may keep interest amounts up to \$100 per year for administrative purposes. (21 CFR Section 1403.21i)

3. Reporting Requirements

Financial Status Reports (OMB Standard Form 269) will be required quarterly during the award period and at the end of the award. **These forms shall be faxed to Phuong DeSear at 202-395-5176.** Performance reports will be required as specified in the Program Guidance.

Note that the final financial reports should be cumulative for the entire award period.

Performance Reports: Due as specified in the Program Guidance.

Special Conditions HIDTA Grants

The following special conditions are incorporated into each award document.

1. In order to provide for compatibility, integration, coordination, and cost effectiveness in the use, procurement, and operation of ADP systems, equipment, and software, recipients are encouraged and authorized to enter into joint purchase or service agreements on a reimbursable or nonreimbursable basis with other HIDTA award recipients. Award recipients are authorized and encouraged to enter into joint purchases or service agreements with other HIDTA award recipients.

2. No federal funds shall be used to supplant state or local funds that would otherwise be made available for project purposes.

3. The operating principles found in 28 CFR Part 23, which pertain to information collection and management or criminal intelligence systems, shall apply to any such systems supported by this award.

4. Prior to expenditure of confidential funds, the award recipient or subrecipient shall sign a certification indicating that he or she has read, understands, and agrees to abide by all of the conditions pertaining to confidential fund expenditures as set forth in Attachment B to the ONDCP Financial and Administrative Guide for Grants. This certification should be submitted to the Assistance Center.

5. The award recipient agrees to account for and use program income, including but not limited to asset forfeitures, in accordance with the "Common Rule" and the ONDCP Financial and Administrative Guide for Grants. Moreover, the use of program income must be consistent with the National Drug Control Strategy.

6. Where furniture has been approved in the budget, the recipient will make every effort to utilize existing State and local surplus property prior to the purchase of any furniture, including computer furniture or items of similar nature.

7. The award recipient may not use designated aircraft assigned to HIDTA-approved task operations and initiatives for the transport of VIP Executive(s) or similar circumstances not relating to the goals and objectives of state and local law enforcement programs.

8. The budget submitted with the proposal is approved.

Reprogramming between budget categories within the same agency and initiative requires the approval of the respective HIDTA Director and must be in accordance with procedures established by the Executive Committee.

Reprogramming of funds between agencies or initiatives requires the written approval of the ONDCP HIDTA Office, regardless of the dollar value of the reprogramming.

In all cases the recipient is responsible for maintaining detailed records of the reprogramming activities and forwarding notification to your HIDTA Director regarding reprogramming activities as they occur.

9. The recipient agrees to comply with the organizational audit requirements of OMB Circular A-133, "Audits of State and Local Governments." The management letter must be submitted with the audit report. Audits must be submitted no later than thirteen (13) months after the close of the recipient organizations audited fiscal year. The submission of the audit report shall be as follows:

An original and one copy shall be sent to the cognizant Federal Agency. Also, a copy of the audit report shall be sent to **Executive Office of the President**, Office of National Drug Control Policy, 750 17th Street, NW, Washington DC 20503.

Attn: Wendy Button, Room 541, Phone: 202-395-6792, Fax: 202-395-5176.

10. The recipient agrees to submit operation reports as defined in the Current Year Program Guidance.

11. Equipment acquired under the grant program must be used by the recipient in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program, the equipment may be used in other activities supported by the Federal agency. The recipient may dispose of the original equipment when no longer needed or supported by the grantor agency.

Inventory lists must be supplied to the HIDTA Director to facilitate the sharing of equipment within and between the HDTAs. Items to be inventoried include Communications, Computer & Related Equipment, Surveillance Equipment, Photo, Vehicles, Video, and Weapons.

12. The recipient will be permitted to designate funds that would be matched or shared; however, these matched or shared funds will not constitute an obligation on behalf of the recipient.

13. Budget item submissions for equipment and other contract items are accepted as best estimate only and are not deemed approved at that price. Recipients are required to assure such items are not currently available, are not duplicative or excessive, and should make market surveys and obtain the best prices available.

14. The recipient acknowledges that failure to submit an acceptable Equal Employment Opportunity Plan (if recipient is required to submit one pursuant to 28 CFR

section 42.302), that is approved by the Office of Civil Rights, is a violation of its Certified Assurances and may result in the suspension of the drawdown of funds.

15. The recipient agrees to complete and keep on file, as appropriate, Immigration and Naturalization Service Employment Eligibility Verification Form (I-9). This form is to be used by recipients of federal funds to verify that persons are eligible to work in the United States.

16. The recipient agrees to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

17. The recipient gives the awarding agency or the General Accountability Office, through any authorized representative, access to and the right to examine all paper or electronic records related to the grant.

RECIPIENT ACCEPTANCE OF SPECIAL CONDITIONS

Gary S. Penrod
Typed Name

Sheriff
Title

/s/ Gary S. Penrod
(Signature)

Date

FY 2005 - Los Angeles HIDTA**Approved Budget - San Bernardino County
Sheriff's Department (15PLAP530Z)****Initiative - Inland Regional Narcotics
Enforcement Team (IRNET)****Resource Recipient - CA Alcohol & Beverage
Control - LA**

Personnel Position	# Positions	Subtotal Personnel	Total
Administrative staff	-	-	
Analyst - Criminal	-	-	
Analyst - Intelligence	-	-	
Analyst - Program	-	-	
Attorney	-	-	
Coordinator	-	-	
Counselor	-	-	
Director	-	-	
Director - Deputy	-	-	
Director- Investigative Support Center	-	-	
Director - Demand Reduction	-	-	
Financial Manager	-	-	
Financial staff	-	-	
Information Technology Manager	-	-	
Information Technology staff	-	-	
Investigative - Law Enforcement Officer	-	-	
Investigative - support	-	-	
Paralegal & support	-	-	
Specialist	-	-	
Therapist	-	-	

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Personnel Position	# Positions	Subtotal	Total Personnel
Training Coordinator	-	-	
Training Staff	-	-	
2004 Reprogram Adjustment - Personnel		-	
		-	
Total Personnel			-

Fringe Benefits Name/Position		Subtotal	Total Benefits
Administrative staff	-	-	
Analyst - Criminal	-	-	
Analyst - Intelligence	-	-	
Analyst - Program	-	-	
Attorney	-	-	
Coordinator	-	-	
Counselor	-	-	
Director	-	-	
Director - Deputy	-	-	
Director- Investigative Support Center	-	-	
Director - Demand Reduction	-	-	
Financial Manager	-	-	
Financial staff	-	-	
Information Technology Manager	-	-	
Information Technology staff	-	-	
Investigative - Law Enforcement Officer	-	-	
Investigative - support	-	-	
Paralegal & support	-	-	
Specialist	-	-	

Fringe Benefits Name/Position	Subtotal	Total Benefits
Therapist	-	-
Training Coordinator	-	-
Training staff	-	-
Overtime	-	-
2004 Reprogram Adjustment - Fringe	-	-
Total Fringe Benefits		-

Overtime Position	# Positions	Subtotal	Total Overtime
Investigative - Law Enforcement Officer	-	14,144	
Support	-	-	
2004 Reprogram Adjustment - Overtime		-	
Total Overtime			14,144

Travel Purpose	# Positions	Subtotal	Total Travel
Administrative	-	-	
Investigative	-	-	
Training	-	-	
2004 Reprogram Adjustment - Travel		-	
Total Travel			-

Facilities Description	# Leases	Subtotal	Total Facilities
Improvements		-	
Lease	-	-	

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Facilities Description	# Leases	Subtotal	Total Facilities
Support		-	
Utilities		-	
2004 Reprogram Adjustment - Facilities		-	
		-	
Total Facilities			-

Services Description and Quantity	# Services	Subtotal	Total Services
Aviation	-	-	
Communications - data lines	-	-	
Communications - mobile phones & pagers	-	-	
Communications - office phones	-	-	
Contractor - Administrative staff	-	-	
Contractor - Analyst - Criminal	-	-	
Contractor - Analyst - Intelligence	-	-	
Contractor - Analyst - Program	-	-	
Contractor - Attorney	-	-	
Contractor - Coordinator	-	-	
Contractor - Counselor	-	-	
Contractor - Director	-	-	
Contractor - Director - Deputy	-	-	

Services Description and Quantity	# Services	Subtotal	Total Services
Contractor - Director - ISC	-	-	
Contractor - Director - Demand Reduction	-	-	
Contractor - Financial Manager	-	-	
Contractor - Financial staff	-	-	
Contractor - Information Technology Manager	-	-	
Contractor - Information Technology staff	-	-	
Contractor - Investigative - LEO	-	-	
Contractor - Investigative - support	-	-	
Contractor - Paralegal & support	-	-	
Contractor - Specialist	-	-	
Contractor - Therapist	-	-	
Contractor - Training Coordinator	-	-	
Contractor - Training staff	-	-	
Deconfliction services	-	-	
Equipment rentals	-	-	
Insurance	-	-	
Insurance - Director's liability	-	-	
Investigative services	-	-	
Printing & document support	-	-	

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Services Description and Quantity	# Services	Subtotal	Total Services
Service contracts	-	-	
Service contracts: treatment/prevention/ demand red		-	
Shipping & postage	-	-	
Software - maintenance	-	-	
Subscriptions - database	-	-	
Subscriptions - publications	-	-	
Training	-	-	
Vehicle allowance	-	-	
Vehicle lease - passenger	-	-	
Vehicle lease - specialty	-	-	
2004 Reprogram Adjustment - Services		-	
		-	
Total Services			-

Equipment Description	# Equipment	Subtotal	Total Equipment
Communications - data lines	-	-	
Communications - mobile phones & pagers	-	-	
Communications - office phones	-	-	
Communications - radios	-	-	

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Equipment Description	# Equipment	Subtotal	Total Equipment
Computers - desktop, laptop & notebook	-	-	
Computers - networking devices	-	-	
Computers - peripherals & printers	-	-	
Office - furniture	-	-	
Office - machines	-	-	
Technical investigative equipment	-	-	
Technical investigative equipment - audio	-	-	
Technical investigative equipment - visual	-	-	
Vehicles - passenger	-	-	
2004 Reprogram Adjustment - Equipment		-	
		-	
Total Equipment			-

Supplies Description	Subtotal	Total Supplies
Investigative/ operational	-	
Treatment, prevention, demand reduction	-	
Office	-	
Software - licenses	-	
2004 Reprogram Adjustment - Supplies	-	
Total		-

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Other Description	Subtotal	Total Other
Administrative costs	-	
PE/PI/PS	-	
2004 Reprogram	-	
Adjustment - Other	-	
Total		-

Total Budget	14,144
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FY 2005 - Los Angeles HIDTA

**Approved Budget - San Bernardino County
Sheriff's Department (15PLAP530Z)**

**Initiative - Inland Regional Narcotics
Enforcement Team (IRNET)**

**Resource Recipient - Inland Regional Narcotics
Enforcement Team (IRNET)**

Personnel Position	# Positions	Subtotal Personnel	Total
Administrative staff	-	-	
Analyst - Criminal	-	-	
Analyst - Intelligence	-	-	
Analyst - Program	-	-	
Attorney	-	-	
Coordinator	-	-	
Counselor	-	-	
Director	-	-	
Director - Deputy	-	-	
Director- Investigative Support Center	-	-	
Director - Demand Reduction	-	-	
Financial Manager	-	-	
Financial staff	-	-	
Information Technology Manager	-	-	
Information Technology staff	-	-	
Investigative - Law Enforcement Officer	-	-	
Investigative - support	-	-	
Paralegal & support	-	-	
Specialist	-	-	
Therapist	-	-	

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Personnel Position	# Positions	Subtotal	Total Personnel
Training Coordinator	-	-	
Training Staff	-	-	
2004 Reprogram Adjustment - Personnel		-	
		-	
Total Personnel			-

Fringe Benefits Name/Position	Subtotal	Total Benefits
Administrative staff	-	-
Analyst - Criminal	-	-
Analyst - Intelligence	-	-
Analyst - Program	-	-
Attorney	-	-
Coordinator	-	-
Counselor	-	-
Director	-	-
Director - Deputy	-	-
Director- Investigative Support Center	-	-
Director - Demand Reduction	-	-
Financial Manager	-	-
Financial staff	-	-
Information Technology Manager	-	-
Information Technology staff	-	-
Investigative - Law Enforcement Officer	-	-
Investigative support	-	-
Paralegal & support	-	-
Specialist	-	-

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Fringe Benefits Name/Position	Subtotal	Total Benefits
Therapist	-	-
Training Coordinator	-	-
Training staff	-	-
Overtime	-	-
2004 Reprogram Adjustment - Fringe	-	-
Total Fringe Benefits		-

Overtime Position	# Positions	Subtotal	Total Overtime
Investigative - Law Enforcement Officer	-	-	
Support	-	-	
2004 Reprogram Adjustment - Overtime		-	
Total Overtime			-

Travel Purpose	# Positions	Subtotal	Total Travel
Administrative	-	-	
Investigative	-	-	
Training		5,000	
2004 Reprogram Adjustment - Travel		-	
Total Travel			5,000

Facilities Description	# Leases	Subtotal	Total Facilities
Improvements		-	
Lease		45,000	

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Facilities Description	# Leases	Subtotal	Total Facilities
Support		-	
Utilities		-	
2004 Reprogram		-	
Adjustment - Facilities		-	
Total Facilities			45,000

Services Description and Quantity	# Services	Subtotal	Total Services
Aviation	-	-	
Communications - data lines	-	-	
Communications - mobile phones & pagers	-	124,431	
Communications - office phones	-	-	
Contractor - Administrative staff	-	-	
Contractor - Analyst - Criminal	-	-	
Contractor - Analyst - Intelligence	-	-	
Contractor - Analyst - Program	-	-	
Contractor - Attorney	-	-	
Contractor - Coordinator	-	-	
Contractor - Counselor	-	-	
Contractor - Director	-	-	
Contractor - Director - Deputy	-	-	

Services Description and Quantity	# Services	Subtotal	Total Services
Contractor - Director - ISC	-	-	
Contractor - Director - Demand Reduction	-	-	
Contractor - Financial Manager	-	-	
Contractor - Financial staff	-	-	
Contractor - Information Technology Manager	-	-	
Contractor - Information Technology staff	-	-	
Contractor - Investigative - LEO	-	-	
Contractor - Investigative - support	-	-	
Contractor - Paralegal & support	-	-	
Contractor - Specialist	-	-	
Contractor - Therapist	-	-	
Contractor - Training Coordinator	-	-	
Contractor - Training staff	-	-	
Deconfliction services	-	-	
Equipment rentals	-	-	
Insurance	-	-	
Insurance - Director's liability	-	-	
Investigative services	-	-	
Printing & document support	-	-	

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Services Description and Quantity	# Services	Subtotal	Total Services
Service contracts	-	-	
Service contracts: treatment/prevention/ demand red		-	
Shipping & postage	-	-	
Software - maintenance	-	-	
Subscriptions - database	-	-	
Subscriptions - publications	-	-	
Training	-	-	
Vehicle allowance	-	60,008	
Vehicle lease - passenger	-	-	
Vehicle lease - specialty	-	-	
2004 Reprogram Adjustment - Services		-	
Total Services			184,439

Equipment Description	# Equipment	Subtotal	Total Equipment
Communications - data lines	-	-	
Communications - mobile phones & pagers	-	-	
Communications - office phones	-	-	
Communications - radios	-	-	

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Equipment Description	# Equipment	Subtotal	Total Equipment
Computers - desktop, laptop & notebook	-	-	
Computers - networking devices	-	-	
Computers - peripherals & printers	-	-	
Office - furniture	-	-	
Office - machines	-	-	
Technical investigative equipment	-	25,000	
Technical investigative equipment - audio	-	-	
Technical investigative equipment - visual	-	-	
Vehicles - passenger	-	-	
2004 Reprogram Adjustment - Equipment		-	
Total Equipment			25,000

Supplies Description	Subtotal	Total Supplies
Investigative/operational	40,000	
Treatment, prevention, demand reduction	-	
Office	2,998	
Software - licenses	-	
2004 Reprogram Adjustment - Supplies	-	
Total		42,998

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Other Description	Subtotal	Total Other
Administrative costs	-	
PE/PI/PS	-	
2004 Reprogram	-	
Adjustment - Other	-	
Total		-

Total Budget	302,437
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FY 2005 - Los Angeles HIDTA
Approved Budget - San Bernardino County
Sheriff's Department (15PLAP530Z)
Initiative - Inland Regional Narcotics
Enforcement Team (IRNET)
Resource Recipient - Redlands Police
Department

Personnel Position	# Positions	Subtotal Personnel	Total
Administrative staff	-	-	
Analyst - Criminal	-	-	
Analyst - Intelligence	-	-	
Analyst - Program	-	-	
Attorney	-	-	
Coordinator	-	-	
Counselor	-	-	
Director	-	-	
Director - Deputy	-	-	
Director- Investigative Support Center	-	-	
Director - Demand Reduction	-	-	
Financial Manager	-	-	
Financial staff	-	-	
Information Technology Manager	-	-	
Information Technology staff	-	-	
Investigative - Law Enforcement Officer	-	-	
Investigative support	-	-	
Paralegal & support	-	-	
Specialist	-	-	
Therapist	-	-	

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Personnel Position	# Positions	Subtotal	Total Personnel
Training Coordinator	-	-	
Training Staff	-	-	
2004 Reprogram Adjustment - Personnel		-	
		-	
Total Personnel			-

Fringe Benefits Name/Position		Subtotal	Total Benefits
Administrative staff	-	-	
Analyst - Criminal	-	-	
Analyst - Intelligence	-	-	
Analyst - Program	-	-	
Attorney	-	-	
Coordinator	-	-	
Counselor	-	-	
Director	-	-	
Director - Deputy	-	-	
Director- Investigative Support Center	-	-	
Director - Demand Reduction	-	-	
Financial Manager	-	-	
Financial staff	-	-	
Information Technology Manager	-	-	
Information Technology staff	-	-	
Investigative - Law Enforcement Officer	-	-	
Investigative - support	-	-	
Paralegal & support	-	-	
Specialist	-	-	

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Fringe Benefits Name/Position	Subtotal	Total Benefits
Therapist	-	-
Training Coordinator	-	-
Training staff	-	-
Overtime	-	-
2004 Reprogram Adjustment - Fringe	-	-
Total Fringe Benefits		-

Overtime Position	# Positions	Subtotal	Total Overtime
Investigative - Law Enforcement Officer	-	14,159	
Support	-	-	
2004 Reprogram Adjustment - Overtime		-	
Total Overtime			14,159

Travel Purpose	# Positions	Subtotal	Total Travel
Administrative	-	-	
Investigative	-	-	
Training	-	-	
2004 Reprogram Adjustment - Travel		-	
Total Travel			-

Facilities Description	# Leases	Subtotal	Total Facilities
Improvements		-	
Lease	-	-	

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Facilities Description	# Leases	Subtotal	Total Facilities
Support		-	
Utilities		-	
2004 Reprogram Adjustment - Facilities		-	
		-	
Total Facilities			-

Services Description and Quantity	# Services	Subtotal	Total Services
Aviation	-	-	
Communications - data lines	-	-	
Communications - mobile phones & pagers	-	-	
Communications - office phones	-	-	
Contractor - Administrative staff	-	-	
Contractor - Analyst - Criminal	-	-	
Contractor - Analyst - Intelligence	-	-	
Contractor - Analyst - Program	-	-	
Contractor Attorney	-	-	
Contractor - Coordinator	-	-	
Contractor - Counselor	-	-	
Contractor - Director	-	-	
Contractor - Director - Deputy	-	-	

Services Description and Quantity	# Services	Subtotal	Total Services
Contractor - Director - ISC	-	-	
Contractor - Director - Demand Reduction	-	-	
Contractor - Financial Manager	-	-	
Contractor - Financial staff	-	-	
Contractor - Information Technology Manager	-	-	
Contractor - Information Technology staff	-	-	
Contractor - Investigative - LEO	-	-	
Contractor - Investigative - support	-	-	
Contractor - Paralegal & support	-	-	
Contractor - Specialist	-	-	
Contractor - Therapist	-	-	
Contractor - Training Coordinator	-	-	
Contractor - Training staff	-	-	
Deconfliction services	-	-	
Equipment rentals	-	-	
Insurance			
Insurance - Director's liability		-	
Investigative services	-	-	
Printing & document support	-	-	

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Services Description and Quantity	# Services	Subtotal	Total Services
Service contracts	-	-	
Service contracts: treatment/prevention/ demand red		-	
Shipping & postage	-	-	
Software - maintenance	-	-	
Subscriptions - database	-	-	
Subscriptions - publications	-	-	
Training	-	-	
Vehicle allowance	-	-	
Vehicle lease - passenger	-	-	
Vehicle lease - specialty	-	-	
2004 Reprogram Adjustment - Services		-	
		-	
Total Services			-

Equipment Description	# Equipment	Subtotal	Total Equipment
Communications - data lines		-	
Communications - mobile phones & pagers	-	-	
Communications - office phones	-	-	
Communications - radios	-	-	

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Equipment Description	# Equipment	Subtotal	Total Equipment
Computers - desktop, laptop & notebook	-	-	
Computers - networking devices	-	-	
Computers - peripherals & printers	-	-	
Office - furniture	-	-	
Office - machines	-	-	
Technical investigative equipment	-	-	
Technical investigative equipment - audio	-	-	
Technical investigative equipment - visual	-	-	
Vehicles - passenger	-	-	
2004 Reprogram Adjustment - Equipment		-	
		-	
Total Equipment			-

Supplies Description	Subtotal	Total Supplies
Investigative/operational	-	
Treatment, prevention, demand reduction	-	
Office	-	
Software - licenses	-	
2004 Reprogram Adjustment - Supplies	-	
	-	
Total		-

390a

Other Description	Subtotal	Total Other
Administrative costs	-	
PE/PI/PS	-	
2004 Reprogram	-	
Adjustment - Other	-	
Total		-

Total Budget	14,159
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FY 2005 - Los Angeles HIDTA
Approved Budget - San Bernardino County
Sheriff's Department (15PLAP530Z)
Initiative - Inland Regional Narcotics
Enforcement Team (IRNET)
Resource Recipient - Riverside County Sheriff's
Department

Personnel Position	# Positions	Subtotal Personnel	Total
Administrative staff	-	-	
Analyst - Criminal	-	-	
Analyst - Intelligence	-	-	
Analyst - Program	-	-	
Attorney	-	-	
Coordinator	-	-	
Counselor	-	-	
Director	-	-	
Director - Deputy	-	-	
Director- Investigative	-	-	
Support Center			
Director - Demand	-	-	
Reduction			
Financial Manager	-	-	
Financial staff	-	-	
Information Technology	-	-	
Manager			
Information Technology	-	-	
staff			
Investigative - Law	-	-	
Enforcement Officer			
Investigative - support	-	-	
Paralegal & support	-	-	
Specialist	-	-	
Therapist	-	-	

392a

Personnel Position	# Positions	Subtotal	Total Personnel
Training Coordinator	-	-	
Training Staff	-	-	
2004 Reprogram Adjustment - Personnel		-	
		-	
Total Personnel			-

Fringe Benefits Name/Position		Subtotal	Total Benefits
Administrative staff	-	-	
Analyst - Criminal	-	-	
Analyst - Intelligence	-	-	
Analyst - Program	-	-	
Attorney	-	-	
Coordinator	-	-	
Counselor	-	-	
Director	-	-	
Director - Deputy	-	-	
Director- Investigative Support Center	-	-	
Director - Demand Reduction	-	-	
Financial Manager	-	-	
Financial staff	-	-	
Information Technology Manager	-	-	
Information Technology staff	-	-	
Investigative - Law Enforcement Officer	-	-	
Investigative - support	-	-	
Paralegal & support	-	-	
Specialist	-	-	

393a

Fringe Benefits Name/Position	Subtotal	Total Benefits
Therapist	-	-
Training Coordinator	-	-
Training staff	-	-
Overtime	-	-
2004 Reprogram Adjustment - Fringe	-	-
Total Fringe Benefits		-

Overtime Position	# Positions	Subtotal	Total Overtime
Investigative - Law Enforcement Officer	-	14,141	
Support	-	-	
2004 Reprogram Adjustment - Overtime		-	
Total Overtime			14,141

Travel Purpose	# Positions	Subtotal	Total Travel
Administrative	-	-	
Investigative	-	-	
Training	-	-	
2004 Reprogram Adjustment - Travel		-	
Total Travel			-

Facilities Description	# Leases	Subtotal	Total Facilities
Improvements		-	
Lease	-	-	

Facilities Description	# Leases	Subtotal	Total Facilities
Support	-	-	
Utilities	-	-	
2004 Reprogram Adjustment - Facilities	-	-	
Total Facilities			-

Services Description and Quantity	# Services	Subtotal	Total Services
Aviation	-	-	
Communications - data lines	-	-	
Communications - mobile phones & pagers	-	-	
Communications - office phones	-	-	
Contractor - Administrative staff	-	-	
Contractor - Analyst - Criminal	-	-	
Contractor - Analyst - Intelligence	-	-	
Contractor - Analyst - Program	-	-	
Contractor - Attorney	-	-	
Contractor - Coordinator	-	-	
Contractor - Counselor	-	-	
Contractor - Director	-	-	
Contractor - Director - Deputy	-	-	

Services Description and Quantity	# Services	Subtotal	Total Services
Contractor - Director - ISC	-	-	
Contractor - Director - Demand Reduction	-	-	
Contractor - Financial Manager	-	-	
Contractor - Financial staff	-	-	
Contractor - Information Technology Manager	-	-	
Contractor - Information Technology staff	-	-	
Contractor - Investigative - LEO	-	-	
Contractor - Investigative - support	-	-	
Contractor - Paralegal & support	-	-	
Contractor - Specialist	-	-	
Contractor - Therapist	-	-	
Contractor - Training Coordinator	-	-	
Contractor - Training staff	-	-	
Deconfliction services	-	-	
Equipment rentals	-	-	
Insurance	-	-	
Insurance - Director's liability	-	-	
Investigative services	-	-	
Printing & document support	-	-	

396a

Services Description and Quantity	# Services	Subtotal	Total Services
Service contracts	-	-	
Service contracts: treatment/prevention/ demand red		-	
Shipping & postage	-	-	
Software - maintenance	-	-	
Subscriptions - database	-	-	
Subscriptions - publications	-	-	
Training	-	-	
Vehicle allowance	-	-	
Vehicle lease - passenger	-	-	
Vehicle lease - specialty	-	-	
2004 Reprogram Adjustment - Services		-	
		-	
Total Services			-

Equipment Description	# Equipment	Subtotal	Total Equipment
Communications - data lines	-	-	
Communications - mobile phones & pagers	-	-	
Communications - office phones	-	-	
Communications - radios	-	-	

397a

Equipment Description	# Equipment	Subtotal	Total Equipment
Computers - desktop, laptop & notebook	-	-	
Computers - networking devices	-	-	
Computers - peripherals & printers	-	-	
Office - furniture	-	-	
Office - machines	-	-	
Technical investigative equipment	-	-	
Technical investigative equipment - audio	-	-	
Technical investigative equipment - visual	-	-	
Vehicles - passenger	-	-	
2004 Reprogram Adjustment - Equipment		-	
		-	
Total Equipment			-

Supplies Description	Subtotal	Total Supplies
Investigative/ operational	-	
Treatment, prevention, demand reduction	-	
Office	-	
Software - licenses	-	
2004 Reprogram Adjustment Supplies	-	
	-	
Total		-

398a

Other Description	Subtotal	Total Other
Administrative costs	-	
PE/PI/PS	-	
2004 Reprogram	-	
Adjustment - Other	-	
	-	
Total		-

Total Budget	14,141
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FY 2005 - Los Angeles HIDTA
Approved Budget - San Bernardino County
Sheriff's Department (15PLAP530Z)
Initiative - Inland Regional Narcotics
Enforcement Team (IRNET)
Resource Recipient - San Bernardino County
Sheriff's Department

Personnel Position	# Positions	Subtotal Personnel	Total
Administrative staff	-	37,186	
Analyst - Criminal	-	-	
Analyst - Intelligence	-	-	
Analyst - Program	-	-	
Attorney	-	-	
Coordinator	-	-	
Counselor	-	-	
Director	-	-	
Director - Deputy	-	-	
Director- Investigative Support Center	-	-	
Director - Demand Reduction	-	-	
Financial Manager	-	-	
Financial staff	-	-	
Information Technology Manager	-	-	
Information Technology staff	-	-	
Investigative - Law Enforcement Officer	-	-	
Investigative - support	-	24,000	
Paralegal & support	-	-	
Specialist	-	-	
Therapist	-	-	

400a

Personnel Position	# Positions	Subtotal	Total Personnel
Training Coordinator	-	-	
Training Staff	-	-	
2004 Reprogram Adjustment - Personnel		-	
		-	
Total Personnel			61,186

Fringe Benefits Name/Position		Subtotal	Total Benefits
Administrative staff	11,986.00	11,986	
Analyst - Criminal	-	-	
Analyst - Intelligence	-	-	
Analyst - Program	-	-	
Attorney	-	-	
Coordinator	-	-	
Counselor	-	-	
Director	-	-	
Director - Deputy	-	-	
Director- Investigative Support Center	-	-	
Director - Demand Reduction	-	-	
Financial Manager	-	-	
Financial staff	-	-	
Information Technology Manager	-	-	
Information Technology staff	-	-	
Investigative - Law Enforcement Officer	-	-	
Investigative - support	6,000.00	6,000	
Paralegal & support	-	-	
Specialist	-	-	

401a

Fringe Benefits Name/Position	Subtotal	Total Benefits
Therapist	-	-
Training Coordinator	-	-
Training staff	-	-
Overtime	-	-
2004 Reprogram Adjustment - Fringe	-	-
Total Fringe Benefits		17,986

Overtime Position	# Positions	Subtotal	Total Overtime
Investigative - Law Enforcement Officer	-	202,700	
Support	-	-	
2004 Reprogram Adjustment - Overtime		-	
Total Overtime			202,700

Travel Purpose	# Positions	Subtotal	Total Travel
Administrative	-	-	
Investigative	-	-	
Training	-	-	
2004 Reprogram Adjustment - Travel		-	
Total Travel			-

Facilities Description	# Leases	Subtotal	Total Facilities
Improvements		-	
Lease	-	-	

402a

Facilities Description	# Leases	Subtotal	Total Facilities
Support		-	
Utilities		-	
2004 Reprogram Adjustment - Facilities		-	
		-	
Total Facilities			-

Services Description and Quantity	# Services	Subtotal	Total Services
Aviation	-	-	
Communications - data lines	-	-	
Communications - mobile phones & pagers	-	-	
Communications - office phones	-	-	
Contractor - Administrative staff	-	-	
Contractor - Analyst - Criminal	-	-	
Contractor - Analyst - Intelligence	-	-	
Contractor - Analyst - Program	-	-	
Contractor - Attorney	-	-	
Contractor - Coordinator	-	-	
Contractor - Counselor	-	-	
Contractor - Director	-	-	
Contractor - Director - Deputy	-	-	

Services Description and Quantity	# Services	Subtotal	Total Services
Contractor - Director - ISC	-	-	
Contractor - Director - Demand Reduction	-	-	
Contractor - Financial Manager	-	-	
Contractor - Financial staff	-	-	
Contractor - Information Technology Manager	-	-	
Contractor - Information Technology staff	-	-	
Contractor - Investigative - LEO	-	-	
Contractor - Investigative - support	-	-	
Contractor - Paralegal & support	-	-	
Contractor - Specialist	-	-	
Contractor - Therapist	-	-	
Contractor - Training Coordinator	-	-	
Contractor - Training staff	-	-	
Deconfliction services	-	-	
Equipment rentals	-	-	
Insurance	-	-	
Insurance Director's liability	-	-	
Investigative services	-	-	
Printing & document support	-	-	

404a

Services Description and Quantity	# Services	Subtotal	Total Services
Service contracts	-	-	
Service contracts: treatment/prevention/ demand red		-	
Shipping & postage	-	-	
Software - maintenance	-	-	
Subscriptions - database	-	-	
Subscriptions - publications	-	-	
Training	-	-	
Vehicle allowance	-	-	
Vehicle lease - passenger	-	-	
Vehicle lease - specialty	-	-	
2004 Reprogram Adjustment - Services		-	
Total Services		-	-

Equipment Description	# Equipment	Subtotal	Total Equipment
Communications - data lines	-	-	
Communications - mobile phones & pagers	-	-	
Communications - office phones	-	-	
Communications - radios	-	-	

405a

Equipment Description	# Equipment	Subtotal	Total Equipment
Computers - desktop, laptop & notebook	-	-	
Computers - networking devices	-	-	
Computers - peripherals & printers	-	-	
Office - furniture	-	-	
Office - machines	-	-	
Technical investigative equipment	-	-	
Technical investigative equipment - audio	-	-	
Technical investigative equipment - visual	-	-	
Vehicles - passenger	-	-	
2004 Reprogram Adjustment - Equipment		-	
Total Equipment			-

Supplies Description	Subtotal	Total Supplies
Investigative/ operational	-	
Treatment, prevention, demand reduction	-	
Office	-	
Software - licenses	-	
2004 Reprogram Adjustment - Supplies	-	
Total		

406a

Other Description	Subtotal	Total Other
Administrative costs	-	
PE/PI/PS	-	
2004 Reprogram	-	
Adjustment - Other	-	
	-	
Total		-

Total Budget	281,872
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FY 2005 - Los Angeles HIDTA

**Approved Budget - San Bernardino County
(15PLAP530Z)**

**Initiative - Inland Regional Narcotics
Enforcement Team (IRNET)**

**Resource Recipient - San Bernardino Police
Department**

Personnel Position	# Positions	Subtotal Personnel	Total
Administrative staff	-	-	
Analyst - Criminal	-	-	
Analyst - Intelligence	-	-	
Analyst - Program	-	-	
Attorney	-	-	
Coordinator	-	-	
Counselor	-	-	
Director	-	-	
Director - Deputy	-	-	
Director- Investigative Support Center	-	-	
Director - Demand Reduction	-	-	
Financial Manager	-	-	
Financial staff	-	-	
Information Technology Manager	-	-	
Information Technology staff	-	-	
Investigative - Law Enforcement Officer	-	-	
Investigative - support	-	-	
Paralegal & support	-	-	
Specialist	-	-	
Therapist	-	-	

408a

Personnel Position	# Positions	Subtotal	Total Personnel
Training Coordinator	-	-	
Training Staff	-	-	
2004 Reprogram Adjustment - Personnel		-	
Total Personnel			-

Fringe Benefits Name/Position		Subtotal	Total Benefits
Administrative staff	-	-	
Analyst - Criminal	-	-	
Analyst - Intelligence	-	-	
Analyst - Program	-	-	
Attorney	-	-	
Coordinator	-	-	
Counselor	-	-	
Director	-	-	
Director - Deputy	-	-	
Director- Investigative Support Center	-	-	
Director - Demand Reduction	-	-	
Financial Manager	-	-	
Financial staff	-	-	
Information Technology Manager	-	-	
Information Technology staff	-	-	
Investigative - Law Enforcement Officer	-	-	
Investigative - support	-	-	
Paralegal & support	-	-	
Specialist	-	-	

409a

Fringe Benefits Name/Position	Subtotal	Total Benefits
Therapist	-	-
Training Coordinator	-	-
Training staff	-	-
Overtime	-	-
2004 Reprogram Adjustment - Fringe	-	-
Total Fringe Benefits		-

Overtime Position	# Positions	Subtotal	Total Overtime
Investigative - Law Enforcement Officer	-	14,133	
Support	-	-	
2004 Reprogram Adjustment - Overtime		-	
Total Overtime			14,133

Travel Purpose	# Positions	Subtotal	Total Travel
Administrative	-	-	
Investigative	-	-	
Training	-	-	
2004 Reprogram Adjustment - Travel		-	
Total Travel			-

Facilities Description	# Leases	Subtotal	Total Facilities
Improvements		-	
Lease	-	-	

410a

Facilities Description	# Leases	Subtotal	Total Facilities
Support	-	-	
Utilities	-	-	
2004 Reprogram Adjustment - Facilities	-	-	
Total Facilities			-

Services Description and Quantity	# Services	Subtotal	Total Services
Aviation	-	-	
Communications - data lines	-	-	
Communications - mobile phones & pagers	-	-	
Communications - office phones	-	-	
Contractor - Administrative staff	-	-	
Contractor - Analyst - Criminal	-	-	
Contractor - Analyst - Intelligence	-	-	
Contractor - Analyst - Program	-	-	
Contractor - Attorney	-	-	
Contractor - Coordinator	-	-	
Contractor - Counselor	-	-	
Contractor - Director	-	-	
Contractor - Director - Deputy	-	-	

Services Description and Quantity	# Services	Subtotal	Total Services
Contractor - Director - ISC	-	-	
Contractor - Director - Demand Reduction	-	-	
Contractor - Financial Manager	-	-	
Contractor - Financial staff	-	-	
Contractor - Information Technology Manager	-	-	
Contractor - Information Technology staff	-	-	
Contractor - Investigative - LEO	-	-	
Contractor - Investigative - support	-	-	
Contractor - Paralegal & support	-	-	
Contractor - Specialist	-	-	
Contractor - Therapist	-	-	
Contractor - Training Coordinator	-	-	
Contractor - Training staff	-	-	
Deconfliction services	-	-	
Equipment rentals	-	-	
Insurance	-	-	
Insurance - Director's liability	-	-	
Investigative services	-	-	
Printing & document support	-	-	

412a

Services Description and Quantity	# Services	Subtotal	Total Services
Service contracts	-	-	
Service contracts: treatment/prevention/ demand red		-	
Shipping & postage	-	-	
Software - maintenance	-	-	
Subscriptions - database	-	-	
Subscriptions - publications	-	-	
Training	-	-	
Vehicle allowance	-	-	
Vehicle lease - passenger	-	-	
Vehicle lease - specialty	-	-	
2004 Reprogram Adjustment - Services		-	
		-	
Total Services			-

Equipment Description	# Equipment	Subtotal	Total Equipment
Communications - data lines	-	-	
Communications - mobile phones & pagers	-	-	
Communications - office phones	-	-	
Communications - radios	-	-	

413a

Equipment Description	# Equipment	Subtotal	Total Equipment
Computers - desktop, laptop & notebook	-	-	
Computers - networking devices	-	-	
Computers - peripherals & printers	-	-	
Office - furniture	-	-	
Office - machines	-	-	
Technical investigative equipment	-	-	
Technical investigative equipment - audio	-	-	
Technical investigative equipment - visual	-	-	
Vehicles - passenger	-	-	
2004 Reprogram Adjustment - Equipment		-	
		-	
Total Equipment			-

Supplies Description	Subtotal	Total Supplies
Investigative/operational	-	
Treatment, prevention, demand reduction	-	
Office	-	
Software - licenses	-	
2004 Reprogram Adjustment - Supplies	-	
	-	
Total		-

414a

Other Description	Subtotal	Total Other
Administrative costs	-	
PE/PI/PS	-	
2004 Reprogram Adjustment - Other	-	
	-	
Total		-

Total Budget	14,133
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415a

EXHIBIT L

**REPORT/RECOMMENDATION TO THE
BOARD OF SUPERVISORS OF
SAN BERNARDINO COUNTY, CALIFORNIA
AND RECORD OF ACTION**

May 16, 2006

Original: Contracts Unit w/Contract

Copy Captain Dvorak w/Contract

Carolyn Bondoc

Bonnie Sowers w/Contract

File

April 11, 2006

FROM: GARY PENROD, Sheriff-Coroner
Sheriff's Department

**SUBJECT: AGREEMENT WITH THE U.S.
DEPARTMENT OF JUSTICE, DRUG
E N F O R C E M E N T
ADMINISTRATION, FOR
PARTICIPATION IN THE 2006
CANNABIS ERADICATION/
SUPPRESSION PROGRAM (DEA
AGREEMENT NO. 2006-34)**

RECOMMENDATIONS:

1. Approve **Agreement No. 06-349** and other grant documents with the U.S. Department of Justice, Drug Enforcement Administration (DEA), for participation in the 2006 Cannabis Eradication/Suppression Program, in the amount of \$38,548, from January 1, 2006 through December 31, 2006.

2. Authorize Sheriff to execute Agreement and other grant documents, on file with the Clerk of the Board.

BACKGROUND INFORMATION: The U.S. Department of Justice, Drug Enforcement Administration, 2006 Cannabis Eradication/Suppression program provides funding to defray the County's costs relating to eradication and suppression of illicit marijuana. This has been an ongoing program, with prior funding ranging from \$35,000-\$60,000 per year since 1999.

The proposed Agreement would provide \$38,548 for equipment rental, overtime costs, aviation fuel, and supplies to support the Department's marijuana suppression program. This program is implemented utilizing existing personnel assigned to the Narcotics Division. The Agreement is for the period of January 1, 2006 through December 31, 2006, and there is no matching requirement.

REVIEW BY OTHERS: This item has been reviewed and approved as to form by County Counsel (Kevin L. Norris, Deputy County Counsel, 387-5441) on March 27, 2006; and has been reviewed by the County Administrative Office (Laurie Rozko, Administrative Analyst, 387-8997) on March 28, 2006. This item has been coordinated with Briana Lane, Grants Coordinator, 387-5401.

FINANCIAL IMPACT: There is no local cost impact related to this item. Appropriations and revenue, in the amount of \$38,548, were included in the Sheriff's 2005-06 and 2006-07 budgets.

417a

SUPERVISORIAL DISTRICT(S): All

PRESENTER: Dennis J. Casey Captain 387-3637

Min04-11 cs CannibisEradication

[SEAL OF THE BOARD OF SUPERVISORS,
SAN BERNARDINO COUNTY, CA]

Record of Action of the Board of Supervisors

**AGREEMENT NO. 06-349
APPROVED (CONSENT CALENDAR)
BOARD OF SUPERVISORS
COUNTY OF SAN BERNARDINO**

Motion	<u>AYE</u>	<u>AYE</u>	<u>AYE</u>	<u>SECOND</u>	<u>AYE</u>
	1	2	3	4	5

DENA M. SMITH, CLERK OF THE BOARD

BY _____

DATED: April 11, 2006

ITEM 049

CC: Sheriff - Casey w/agree
Contractor c/o Sheriff w/agree
ACR - Mejico w/agree
IDS w/agree
Risk Management
Sheriff - Penrod
County Counsel - Norris
CAO-Grants Coord. - Lane, B.
CAO - Rozko

418a

File w/Agreement

mb

Rev. 07/97

[OFFICIAL SEAL
of the County of
San Bernardino]

County of San Bernardino

FAS

CONTRACT TRANSMITTAL

COPY

FOR COUNTY USE ONLY

X	New	Vendor Code	SC	SHR	A	Contract Number 06-349
	Change					
	Cancel					
County Department SHERIFF		Dept. SHR		Orgn. SHR		Contractor's License No.
County Department Contract Representative DENNIS J. CASEY, CAPTAIN		Telephone (909) 387-0640		Total Contract Amount \$38,548		
Contract Type						
Revenue <input type="checkbox"/> Encumbered <input type="checkbox"/> Unencumbered <input type="checkbox"/> Other:						
If not encumbered or revenue contract type, provide reason: _____						

Commodity Code		Contract Start Date		Contract End Date	Original Amount	Amendment Amount
		01/01/06		12/31/06	\$38,548	
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/ JOB No.	Amount
AAA	SIIR	SHER		9094		\$38,548
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/ JOB No.	Amount
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/ JOB No.	Amount
Project name		Estimated Payment Total by Fiscal Year				
2006 Domestic Cannabis		FY	Amount	I/D	FY	Amount
Eradication/Suppression						
Program						

421a

CONTRACTOR United States Department of Justice -
Drug Enforcement Administration

Federal ID No. or Social Security No. _____

Contractor's Representative Patrick Kelly, Special
Agent (Group 2)

Address 450 Golden Gate Avenue, 14th Floor, San
Francisco, CA 94102 Phone (415) 436-8608

Nature of Contract: *(Briefly describe the general terms
of the contract)*

Agreement from the U.S. Department of Justice,
Drug Enforcement Administration (DEA),
outlining the terms of the 2006 Domestic
Cannabis Eradication/Suppression Program.
The DEA will reimburse the County \$38,548 to
defray costs relating to the eradication and
suppression of illicit marijuana. These funds
will be used for equipment rental, overtime
costs, and aviation flight-time reimbursement.
The term of this agreement is from January 1,
2006 through December 31, 2006.

DEA Agreement No. 2006-34

CS CONDOJDEACannabisEradTrans

*(Attach this transmittal to all contracts not prepared on
the "Standard Contract" form.)*

422a

Approved as to Legal Form (sign in blue ink)

► /s/ Kevin L. Norris

County Counsel, by Kevin L. Norris, Deputy

Date 3-27-06

Reviewed as to Contract Compliance

►

Date

Presented to BOS for Signature

► /s/

Department Head

Date 3/28/06

Auditor/Controller-Recorder Use Only

Contract Database <input type="checkbox"/> FAS	
Input Date	Keyed By

[Seal of the
U.S. Department of Justice
Drug Enforcement Administration]

**U.S. Department of Justice
Drug Enforcement Administration**

Agreement Number: 2006-34

AGREEMENT

This agreement is entered between the **SAN BERNARDINO COUNTY SHERIFF'S DEPARTMENT** hereinafter referred to as **SAN BERNARDINO COUNTY** and the **DRUG ENFORCEMENT ADMINISTRATION OF THE UNITED STATES DEPARTMENT OF JUSTICE**, hereinafter referred to as **DEA**, with a reference to the following:

There is evidence that trafficking in controlled substances exists and that such illegal activity has a substantial and detrimental effect on the health and general welfare of the people of the State of **CALIFORNIA**. The parties hereto agree that it is to their mutual benefit to cooperate in locating and eradicating illicit cannabis plants and in the investigation and prosecution of cases before the courts of the United States and the courts of the State of **CALIFORNIA** involving controlled substances. The **DEA**, pursuant to the authority of 21 USC 873, proposes to provide certain necessary funds and **SAN BERNARDINO COUNTY** is desirous of securing funds.

NOW, therefore, in consideration of the mutual covenants hereinafter contained, the parties hereto have agreed as follows:

1. **SAN BERNARDINO COUNTY**, will, with its own law enforcement personnel and employees, as hereinafter perform specified, performed the activities and duties described below:
 - a. Gather and report intelligence data relating to the illicit possession and distribution of marijuana.
 - b. Investigate and report instances involving the trafficking in controlled substances.
 - c. Provide staffing of law enforcement personnel for the eradication of illicit marijuana located within the State of **CALIFORNIA**.
 - d. Arrest and bring to prosecution defendants charged with violation of the controlled substance laws.
 - e. Send required samples of eradicated marijuana to the NIDA marijuana Potency Monitoring Program.

It is understood and agreed by the parties to this agreement that the activities described in Sub-paragraphs a, b, c, d, and e above shall be provided with the existing personnel and that the scope of **SAN BERNARDINO COUNTY** program with respect to those activities by such personnel, shall be solely at **SAN BERNARDINO COUNTY** discretion, subject to appropriate limitations contained in the budget adopted by **SAN BERNARDINO COUNTY**.

DEA will pay to **SAN BERNARDINO COUNTY** the amount of **THIRTY EIGHT THOUSAND FIVE HUNDRED AND FORTY EIGHT (\$38,548)** for the period of JANUARY 1, 2006 to DECEMBER 31, 2006 to defray the cost relating to the eradication and suppression of illicit marijuana. It is explicitly understood and agreed that Federal funds provided to **SAN BERNARDINO COUNTY** under this agreement may not be used to defray costs relating to herbicidal eradication of marijuana without the advance written consent of DEA.

The Federal funds provided to **SAN BERNARDINO COUNTY** are primarily intended for payment of deputies/officers' overtime, and salary and overtime of reserve officers while they are actively engaged in the cannabis eradication process, as well as per diem as appropriate and other direct costs related to the actual conduct of cannabis eradication, such as rental of equipment and vehicles, fuel for vehicles and aircraft, and minor repairs and maintenance necessitated by their use to support cannabis eradication. These Federal funds are not primarily intended for purchase of equipment. Unless specifically itemized and approved in advance in the operational plan, expenditures for expendable and non-expendable equipment should not normally exceed 10% of the total Federal funds awarded. All purchases of property having a useful life of one year or more with an acquisition cost of \$300.00 or more per unit or an aggregate cost of \$1,000.00 or more require the advance approval of the Domestic Cannabis Eradication/Suppression Program (DCE/SP) coordinator, unless specifically approved in the operational plan.

If DEA approves the purchase of non-expendable equipment with an acquisition cost of \$5,000.00 or more per unit for the use of **SAN BERNARDINO COUNTY** personnel engaged in cannabis eradication under this Agreement, DEA may elect to claim ownership of the equipment at the termination of this Agreement. DEA may also, at its discretion, allow **SAN BERNARDINO COUNTY** to retain ownership of the equipment for its future use in accordance with applicable Federal rules and regulations.

Payment by DEA to **SAN BERNARDINO COUNTY** will be in accordance with a schedule determined by DEA and said payment will be made pursuant to the execution by **SAN BERNARDINO COUNTY** of a Standard Form SF-270, Request for Advance or Reimbursement, and receipt of same by DEA. However, no funds will be paid by DEA to a state/county agency under this Agreement until DEA has received to its satisfaction an accounting of the expenditures of all funds paid to this state/county agency during the periods of previous Agreements for this same purpose. These expenditures will be reported on a Standard Form SF-269, Financial Status Report, and December Monthly Accounting Form.

3. Employees of **SAN BERNARDINO COUNTY** shall at no time be considered employees of the United States Government or the DEA for any purpose, nor will this Agreement establish an agency relationship between **SAN BERNARDINO COUNTY** and the DEA.

4. **SAN BERNARDINO COUNTY** shall maintain complete and accurate reports, records and accounts of all obligations and expenditures of DEA funds under

this Agreement in accordance with generally accepted accounting principle and in accordance with state laws and procedures for expending and accounting for its own funds. **SAN BERNARDINO COUNTY** shall further maintain its records of all obligations and expenditures of DEA funds under this Agreement in accordance with all instructions provided by DEA to facilitate on-site inspection and auditing of such records and accounts.

5. **SAN BERNARDINO COUNTY** shall permit and have available for examination and auditing by DEA, the United States, Department of Justice or the Comptroller General of the United States, or any of their duly authorized agents and representatives, any and all investigative reports, records, documents, accounts, invoices, receipts or expenditures relating to this Agreement. In addition, **SAN BERNARDINO COUNTY** will maintain all such foregoing reports and records until all audits and examinations are completed and resolved, or for a period of three (3) years after termination of this Agreement, whichever sooner.

6. The recipient agrees to comply with the organizational audit requirements of OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations." In conjunction with the beginning date of the award, the audit report period of the state or local government entity to be audited under the single audit requirement is (01/2006) to (12/2006). The audit report must be submitted no later than (01/2008) and each audit cycle thereafter covering the entire award period as originally approved or amended. The management letter must be submitted with the audit report. Subsequent audits

must be submitted no later than thirteen (13) months after the close of the recipient organization's audited fiscal year. The submission of the audit report shall be as follows:

When the Department of Justice (DOJ) is the cognizant agency, an original and one copy of the audit report shall be sent to:

DOJ Regional Inspector General for Audit
San Francisco Regional Audit Manager
1200 Bayhill Drive, Suite 201
San Bruno, California 94066
(415) 876-9220

A copy of your audit transmittal letter addressed to the Regional Inspector General shall be sent to:

Audit Services
Office of the Controller
Office of Justice Programs
810 7th Street, N.W., Room 5303
Washington, D.C. 20531

When DOJ is not the cognizant agency, an original and one copy of the audit report shall be sent to the cognizant agency:

Also, a copy of the audit report shall be sent:

429a

DOJ Regional Inspector General for Audit
San Francisco Regional Audit Manager
1200 Bayhill Drive, Suite 201
San Bruno, California 94066
(415) 876-9220

A copy of your audit transmittal letter addressed to the Regional Inspector General, shall be sent to:

Audit Services
Office of the Controller
Office of Justice Programs
810 7th Street, N.W., Room 5303
Washington, D.C. 20531

The recipient agrees to submit their corrective action plan with the audit report to the DOJ Regional Inspector General for Audit, when there are findings/recommendations disclosed in the audit report. The corrective action plan should include: (1) specific steps taken to comply with the recommendations; (2) timetable for performance and/or implementation date for each recommendation; and (3) description of monitoring to be conducted to ensure implementation.

A Department of Justice Order requires the Office of Justice Programs (OJP) to maintain a data base of all grants made by DOJ components (DOJ Order 2900.8A (June 20, 1990) copy attached). To implement this requirement, OJP requires all DOJ components to submit to it a completed form, "Grantee Information for Access, a copy of which is attached, for completion by the recipient.

The recipient acknowledges that failure to furnish an acceptable audit as determined by the cognizant Federal agency may be a basis for denial of future Federal funds and/or refunding of Federal funds and may be a basis for limiting the recipient to payment by reimbursement on a case basis.

7. Executive Order 12549

The participant agrees that an authorized officer or employee will execute and return to the DEA Investigative Support Section (OMS), 2401 Jefferson Davis Highway, Alexandria, Virginia 22301, the attached OJP Form 4061/6, "Certification Regarding Lobbying; Debarment, Suspension, and other Responsibility Matters; and Drug Free Workplace Requirements." The participant acknowledges that this agreement will not take effect and that no Federal funds will be awarded by DEA until the completed certification is received.

8. Disclosure of Federal Participation

In compliance with Section 623 of Public Law 102-141, the recipient agrees that no amount of this Award shall be used to finance the acquisition of goods or services (including construction services) for the Project unless the recipient:

- (a) Specifies in any announcement of the awarding of the contract for the procurement of the goods and services involved (including construction services) the amount of Federal funds that will be used to finance the acquisition; and

- (b) Expresses the amount announced pursuant to paragraph (a) as a percentage of the total cost of the planned acquisition.

The above requirements only apply to procurements for goods or services (including construction services) that have an aggregate value of \$500,000 or more.

9. It is further covenant and agreed that **SAN BERNARDINO COUNTY** will hold the DEA, its agents and employees and the United States Government harmless from any and all claims, demands, suits, liabilities and cases of action, of whatever kind and designation, and wherever located in the State of **CALIFORNIA**, resulting from the DCE/SP funded by DEA. The DEA acknowledges that the United States is liable for the wrongful or negligent acts or omissions of its officers and employees while on duty and acting within the scope of their employment to the extent permitted by the Federal Tort Claims Act, 28 USC Sections 1346(b), 2671, et seq. The parties hereby acknowledge that the obligations of **SAN BERNARDINO COUNTY** are limited to claims, demands, suits, liabilities and causes of action resulting from the DCE/SP funded by DEA and arising from the actions of **SAN BERNARDINO COUNTY**.

10. **SAN BERNARDINO COUNTY** shall comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Americans With Disabilities Act (as incorporated in the Civil Rights Act of 1991) and all requirements imposed or pursuant to the regulations of the United States Department of Justice implementing those laws, 28 C.F.R. Part 42, Subparts C, D, and F.

11. Within sixty (60) days after termination of the Agreement, **SAN BERNARDINO COUNTY** will prepare a December Monthly Accounting Form and a SF-269, Financial Status Report, itemizing the breakdown of final expenditures. The December Accounting form and the SF-269, along with a refund check, payable to DEA for any unexpended funds which were advanced by DEA, pursuant to this Agreement will be returned to DEA.

12. Upon submission of the SF-269 and December Accounting Form to the Investigative Support Section (OMS) for the preceding year a copy of the general ledger and the underlying supporting documentation reflecting the expenditures for equipment in excess of \$5,000 and the expenses associated with the rental or leasing of vehicles or aircraft must be attached.

13. The duration of this Agreement shall be as specified in Paragraph 2. The terms of this Agreement may be terminated by either party for good cause shown by notice in writing given to the other party thirty (30) days prior thereof. All obligations that are outstanding on the above prescribed termination date or on the date of any thirty (30) day notice of termination shall be liquidated by **SAN BERNARDINO COUNTY** within sixty (60) days thereof, in which event DEA will only be liable for obligations incurred by **SAN BERNARDINO COUNTY** during the terms of this Agreement. In no event shall **SAN BERNARDINO COUNTY** incur any new obligations during the period of notice of termination. **SAN BERNARDINO COUNTY** shall return to DEA all unexpended funds forthwith after the sixty (60) days liquidated period.

433a

THE SAN BERNARDINO COUNTY
SHERIFF'S DEPARTMENT

By: /s/ Gary Penrod _____

Title: _____ Sheriff _____ Date: 3/21/04

DRUG ENFORCEMENT ADMINISTRATION

By: /s/ _____ Date: 3-6-04

Special Agent in Charge
San Francisco Field Division

*DEA ACCOUNTING DATA: _____

DEA/FFS INPUT DATE: _____ BY: _____

*DIVISIONAL FISCAL CLERK MUST INPUT INTO
DEA/FFS

**TO BE FILLED OUT BY HEADQUARTERS:
APPROVAL FOR PAYMENT**

This is to verify that all of the administrative
determinations have been made, that the payment is
legal, proper, correct and approved for payment.

Amount: \$38,548.00

Obligation Doc No. See Above

Line No. _____

Signature _____

Printed Name /Title Philip A. Jessar-Chief,
Investigative Support Section

Date Approved _____

434a

REQUEST FOR ADVANCE OR REIMBURSEMENT
STANDARD FORM 270 (Rev. 7-97)

Page 1 of 2 Pages

(Fold-out exhibit, see next page)

13. CERTIFICATION

I certify that to the best of my knowledge and belief the data on the reverse are correct and that all outlays were made in accordance with the grant conditions or other agreement and that payment is due and has not been previously requested.

SIGNATURE OR AUTHORIZED CERTIFIED
OFFICIAL

/s/ Gary Penrod

TYPED OR PRINTED NAME AND TITLE

Gary S. Penrod, Sheriff
San Bernardino County Sheriff's Department

Date Request Submitted
3/21/06

Telephone (Area Code, Number and Extension)

(909) 387-3669

This space for agency use

Public reporting burden for this collection of information is estimated to average 60 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this

collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0000), Washington, DC 20403

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

INSTRUCTIONS

Please type or print legibly. Items 1, 3, 5, 9, 10, 11e, 11f, 11g, 11i, 12 and 13 are self-explanatory; specific instructions for other items are as follows:

<i>Item</i>	<i>Entry</i>
-------------	--------------

- 2 Indicate whether request is prepared on cash or accrued expenditure basis. All requests for advances shall be prepared on a cash basis.
- 4 Enter, the Federal grant number, or other identifying number assigned by the Federal sponsoring agency. If the advance or reimbursement is for more than one grant or other agreement, insert N/A; then, show the aggregate amounts. On a separate sheet, list each grant or agreement number and the Federal share of outlays made against the grant or agreement.
- 6 Enter the employer identification number assigned by the U.S. Internal Revenue Service.

or the FICE (institution) code if requested by the Federal agency.

- 7 This space is reserved for an account number or other identifying number that may be assigned by the recipient.
- 8 Enter the month, day, and year for the beginning and ending of the period covered in this request. If the request is for an advance or for both an advance and reimbursement, show the period that the advance will cover. If the request is for reimbursement, show the period for which the reimbursement is requested.

Note: The Federal sponsoring agencies have the option of requiring recipients to complete items 11 or 12, but not both. Item 12 should be used when only a minimum amount of information is needed to make an advance and outlay information contained in item 11 can be obtained in a timely manner from other reports.

- 11 The purpose of the vertical columns (a), (b), and (c) is to provide space for separate cost breakdowns when a project has been planned and budgeted by program, function, or activity. If additional columns are needed, use as many additional forms as needed and indicate page number in space provided in upper right; however, the summary totals of all programs, functions, or activities should be shown in the "total" column on the first page.
- 11a Enter in "as of date," the month, day, and year of the ending of the accounting period to which

this amount applies. Enter program outlays to date (net of refunds, rebates, and discounts), in the appropriate columns. For requests prepared on a cash basis, outlays are the sum of actual cash disbursements for goods and services, the amount of indirect expenses charged, the value of in-kind contributions applied and the amount of cash advances and payments made to subcontractors and subrecipients. For requests prepared on an accrued expenditure basis, outlays are the sum of the actual cash disbursements, the amount of indirect expenses incurred, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received and for services performed by employees, contracts, subgrantees and other payees.

- 11b Enter the cumulative cash income received to date, if requests are prepared on a cash basis. For requests prepared on an accrued expenditure basis, enter the cumulative income earned to date. Under either basis, enter only the amount applicable to program income that was required to be used for the project or program by the terms of the grant or other agreement.
- 11d Only when making requests for advance payments, enter the total estimated amount of cash outlays that will be made during the period covered by the advance.

439a

- 13 Complete the certification before submitting this request.

STANDARD FORM 270 (Rev. 7-97) Back

440a

Memorandum

[Seal of U.S. Department
of Justice Drug Enforcement
Administration]

Subject	Date
Electronic Funds Transfer (DPN: 610-13	Feb 13, 2006

To

All Domestic Cannabis Eradication/Suppression
Program Coordinators & Participating Agencies

From

/s/

Philip A. Jessar

Chief

Investigative Support Section

Funding for the Domestic Cannabis Eradication/Suppression Program (DCE/SP) is only available by electronic transfer. Funds will be transferred directly into the Letter of Agreement (LOA) agency bank account. In order to process electronic transfers the following information must be provided below:

Agency Name on Bank Account: San Bernardino
County Treasurer's Office

Account Number: 1496150090

441a

Name of Bank/Financial Institution: B a n k O f America

Address of Bank/Financial Institution: 525 S. Flower Street, Los Angeles, CA 90071

Telephone Number of Bank/Financial Institution: (213) 345-6973

Contact Person of Bank/Financial Institution: Marty Deal

Bank/Financial Institution AB A Number: 121000358

Greg Garland, Lieutenant

Authorized Agency Representative - Name & Title

/s/

Signature of Authorized Agency Representative

3-16-06

Date

(This original form and original Letter of Agreement Package must be returned to the Investigative Support Section. Please retain a copy for your records.)

442a

Memorandum

[Seal of U.S. Department
of Justice Drug Enforcement
Administration]

Subject	Date
Grantee Information for ACCESS	Feb 13, 2006

To
Audit Services

From

Drug Enforcement Administration Investigative
Support Section

1. GRANTEE: San Bernardino County Sheriff's
Department
2. GRANTEE ADDRESS: 655 E. Third Street
San Bernardino, CA 92415
3. GRANT/LOA NO.: 2006-34
4. GRANT PERIOD: January 1, 2006 through
December 31, 2006
5. AUDIT REPORT PERIOD: January 1, 2006
through December 31, 2006
6. COGNIZANT AGENCY: DOJ/Drug Enforcement
Administration

443a

7. RECIPIENT TYPE: 01 AGENCY LEVEL: 03
Code Code

Recipient Type and Agency Level Codes:

01 - Law Enforcement 02 - State 03 - County 04 - City

REASON OR MEMO: (Check as many of the following as apply)

- a. New Grantee: []
- b. New Award: [XXX]
- c. Change in Grantee Address: []
- d. Change in Award Report Period: []
- e. Change in Audit Report Period: []
- f. Change in Cognizant Agency: []
- g. Other: _____
(Specify)

NOTE: If submission is for a CHANGE ONLY (8c - 8g) to information previously submitted to Audit Services, you will only need to complete Item 1 in Items 1-6 in addition to your change information.

**U.S. DEPARTMENT OF JUSTICE
OFFICE OF JUSTICE PROGRAMS
OFFICE OF THE COMPTROLLER**

**CERTIFICATIONS REGARDING LOBBYING;
DEBARMENT, SUSPENSION AND OTHER
RESPONSIBILITY MATTERS; AND
DRUG-FREE WORKPLACE REQUIREMENTS**

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 28 CFR Part 69, "New Restrictions on Lobbying" and 28 CFR Part 67, "Government-wide Department and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon reliance will be placed when the Department of Justice determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 28 CFR Part 69, for persons entering into a grant or cooperative agreement over

\$100,000, as defined at 28 CFR Part 69, the applicant certifies that:

(a) No Federal appropriate funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure of Lobbying Activities," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements and subcontracts) and that all sub-recipients shall certify and disclose accordingly. 1

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS (DIRECT RECIPIENT)

As required by Executive Order 12549, Debarment and Suspension, and implemented at 28 CFR Prt 67, for prospective participants in primary covered transactions, as defined at 28 CFR Part 67, Section 67.510-

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 28 CFR Part 67, Subpart F, for grantees, as defined at 28 CFR Part 67 Sections 67.615 and 67.620-

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

(1) The dangers of drugs abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employees of convicted employees must provide notice, including position title, to: Department of Justice, Office of Justice Programs, ATTN: Control Desk, 633 Indiana Avenue, N.W., Washington, D.C. 20531. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted-

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, country, state, zip code)

Check ☐ if there are workplace on file that are not identified here.

Section 67, 630 of the regulations provides that a grantee that is a State may elect to make one certification in each Federal fiscal year. A copy of which should be included with each application for Department of Justice funding. States and State agencies may elect to use OJP Form 4061/7.

Check ☐ if the State has elected to complete OJP Form 4061/7.

**DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 28 CFR Part 67, Subpart F, for grantees, as defined at 28 CFR Part 67; Sections 67.615 and 67.620-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in connection with any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing within 10 calendar days of the conviction, to: Department of Justice, Office of Justice Programs, ATTN: Control Desk, 633 Indiana Avenue, N.W., Washington, D.C. 20531.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

1. Grantee Name and Address:

San Bernardino County Sheriff's Department
655 E. Third Street
San Bernardino, CA 92415

2. Application Number and/or Project Name

451a

2006-34

Marijuana Suppression Program

3. Grantee IRS/Vendor Number

95-6002748

4. Typed Name and Title of Authorized Representative

Gary S. Penrod, Sheriff-Coroner

5. Signature

6. Date

/s/ Gary Penrod

3/2/06

Item # 4904/11/06 Agree. No. 06349

OJP FORM 4061/6 (3-91) REPLACES OJP FORMS
4061/2, 4062/3 and 4061/4 WHICH ARE OBSOLETE.

452a

EXHIBIT M

**REPORT/RECOMMENDATION TO THE
BOARD OF SUPERVISORS OF
SAN BERNARDINO COUNTY, CALIFORNIA
AND RECORD OF ACTION**

April 6, 2006

Original: Contracts Unit w/Agreement

Copy Dennis Tilton w/Agreement
 Deputy Kovich w/Agreement
 Carolyn Bondoc
 Bonnie Sowers w/Agreement
 File

November 15, 2005

FROM: GARY PENROD, Sheriff-Coroner
 Sheriff's Department

**SUBJECT: AGREEMENT WITH THE U.S.
 DEPARTMENT OF AGRICULTURE,
 FOREST SERVICE (AGREEMENT
 NO. 06-LE-1105-1360-034)**

RECOMMENDATION: Approve Agreement No. 05-1129 with the U.S. Department of Agriculture, Forest Service, for reimbursement of law enforcement services provided on National Forest System (NFS) lands, not to exceed \$55,000, for the period of October 1, 2005 through September 30, 2006.

BACKGROUND INFORMATION: San Bernardino County encompasses over 20,000 square miles and includes a significant portion of federal land. The Sheriff has criminal jurisdiction throughout the

County, including NFS lands, and is responsible for providing law enforcement services in these areas.

The proposed Cooperative Law Enforcement Agreement with the U.S. Department of Agriculture, Forest Service, provides reimbursement, not to exceed \$55,000, for the for the period of October 1, 2005 through September 30, 2006. Under the terms of this amendment, the Forest Service will reimburse up to \$35,000 for patrol services at campgrounds and trailheads during holiday weekends and up to \$20,000 for narcotics enforcement including identification, apprehension and prosecution of suspects engaged in manufacturing and trafficking controlled substances on NFS land. This funding supplements the Sheriff's patrol and response to calls for service in these remote areas of the County. The Sheriff's stations providing services under this portion of the agreement would be: Big Bear Station, Chino Hills Station, Fontana Station, Phelan Substation, Twin Peaks Station and Yucaipa Station.

This agreement may be terminated at any time upon written notice. The agreement is executed as of the date of the last signature and is effective through September 30, 2010. The agreement will be amended annually to update the costs for the ensuing fiscal year.

REVIEW BY OTHERS: This agreement has been reviewed and approved as to form by County Counsel (Dennis Tilton, Deputy County Counsel) on November 4, 2005; and has been reviewed by the County Administrative Office (Laurie Rozko, 387-8997, Administrative Analyst) on November 2, 2005.

FINANCIAL IMPACT: There is no local cost impact related to this item. This agreement provides reimbursement for law enforcement services, up to \$55,000. Three-fourths of the appropriations and revenue were included in the Sheriff's 2005-06 budget, including \$15,000 for aviation (AAA-SHR) and \$26,250 for additional patrol budgeted in Public Gatherings (SCC-SHR); the remaining one-fourth will be included in the proposed 2006-07 budget.

SUPERVISORIAL DISTRICT(S): All

PRESENTER: Dennis J. Casey, Captain, 387-3637

MIN 11-15 c US Forest Service.doc

[SEAL OF THE BOARD OF SUPERVISORS,
SAN BERNARDINO COUNTY, CA]

Record of Action of the Board of Supervisors
AGREEMENT NO. 05-1129
APPROVED (CONSENT CALENDAR)
BOARD OF SUPERVISORS
COUNTY OF SAN BERNARDINO

Motion	<u>AYE</u>	<u>SECOND</u>	<u>AYE</u>	<u>AYE</u>	<u>MOVE</u>
	1	2	3	4	5

DENA M. SMITH, CLERK OF THE BOARD

BY /s/

DATED: November 15, 2005

ITEM 037

455a

CC: Sheriff – Casey w/agree
Contractor c/o Sheriff w/agree
ACR – Valdez w/agree
IDS-w/agree
Risk Management
Sheriff Penrod
County Counsel – Tilton
CAO-Rozko

File- w/Agreement

mb

Rev 07/97

[OFFICIAL SEAL
of the County of
San Bernardino]

County of San Bernardino

FAS

CONTRACT TRANSMITTAL

FOR COUNTY USE ONLY

X	New	Vendor Code	SC	Dept. SHR	A	Contract Number 05-1129
	Change					
	Cancel					
County Department SHERIFF		Dept. SHR		Orgn. SHR		Contractor's License No.
County Department Contract Representative DENNIS J. CASEY, CAPTAIN				Telephone (909) 387-0640		Total Contract Amount \$55,000
<div style="text-align: center;">Contract Type</div> <input checked="" type="checkbox"/> Revenue <input type="checkbox"/> Encumbered <input type="checkbox"/> Unencumbered <input type="checkbox"/> Other:						
If not encumbered or revenue contract type, provide reason: _____						

Commodity Code		Contract Start Date		Contract End Date	Original Amount	Amendment Amount
10-1-05				9-30-10	\$55,000	
Fund AAA	Dept. SHR	Organization SHR	Appr.	Obj/Rev Source 9565	GRC/PROJ/ JOB No.	Amount \$20,000
Fund SCC	Dept. SHR	Organization SHR	Appr.	Obj/Rev Source 9565	GRC/PROJ/ JOB No.	Amount \$35,000
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/ JOB No.	Amount
Project name		Estimated Payment Total by Fiscal Year				
Mutual Aid		FY	Amount	I/D	FY	Amount I/D

CONTRACTOR United States Department of
Agriculture, Forest Service

Federal ID No. or Social Security No. _____

Contractor's Representative Cindy Maldonado

Address 701 N. Santa Anita Avenue, Arcadia, CA
91006 Phone (626) 574-5351

Nature of Contract: *(Briefly describe the general terms of the contract)*

Cooperative Law Enforcement Agreement between the U.S. Department of Agriculture, Forest Service, San Bernardino National Forest, and the County of San Bernardino, Sheriff's Department, for a cooperative effort between the parties to enhance State and local law enforcement in connection with activities on National Forest System (NFS) lands. This Agreement provides reimbursement to the County of San Bernardino Sheriff's Department, not to exceed \$55,000, for the period of October 1, 2005 through September 30, 2006. Under the terms of this Agreement, the Forest Service will reimburse up to \$35,000 for patrol services at campgrounds and trailheads during holiday weekends and up to \$20,000 for narcotics enforcement including identification, apprehension and prosecution of suspects engaged in manufacturing and trafficking controlled substances on NFS land.

This agreement may be terminated at any time upon written notice. The agreement is executed as of the date of the last signature and is effective through

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September 30, 2010. The agreement will be amended annually to update the costs for the ensuing fiscal year.

COOPERATIVE LAW ENFORCEMENT AGREEMENT NO. 06-LE-1105-1360-034 *(As used in the text of this agreement, "Cooperator" refers to the County and "Forest Service" refers to the United States Department of Agriculture, Forest Service.*

(Attach this transmittal to all contracts not prepared on the "Standard Contract" form.)

Approved as to Legal Form (sign in blue ink)

► /s/ Dennis S. Tilton

County Counsel, Dennis S. Tilton, Deputy

Date 11-4-05

Reviewed as to Contract Compliance

► _____

Date _____

Presented to BOS for Signature

► /s/

Department Head

Date 11/04/05

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Auditor/Controller-Recorder Use Only

<input type="checkbox"/> Contract Database <input type="checkbox"/> FAS	
Input Date	Keyed By

Agreement No. 06-LE-1105-1360-030

**COOPERATIVE LAW ENFORCEMENT
AGREEMENT Between the
SAN BERNARDINO COUNTY SHERIFF'S
DEPARTMENT And the U.S. DEPARTMENT OF
AGRICULTURE, FOREST SERVICE
SAN BERNARDINO NATIONAL FOREST**

This Cooperative Law Enforcement Agreement (agreement) is entered into by and between the *San Bernardino* County Sherriff's Department, hereinafter referred to as the Cooperator, and the United States Department of Agriculture, Forest Service, *San Bernardino* National Forest, hereinafter referred to as the Forest Service, under the provisions of the Cooperative Law Enforcement Act of August 10, 1971, P.L. 92-82. 16 U.S.C. 551a.

Background: The parties to this agreement recognize that public use of National Forest System lands (NFS lands) is usually located in areas that are remote or sparsely populated. The parties also recognize that the enforcement of State and local law is related to the administration and regulation of NFS lands and the Cooperator has a limited amount of financing to meet their responsibility of enforcing these laws.

I. PURPOSE:

The purpose of this agreement is to document a cooperative effort between the parties to enhance State and local law enforcement in connection with activities on NFS lands and provide for reimbursement to the Cooperator for the intensified portion of this effort.

In consideration of the above premises, the parties agree as follows:

II. THE COOPERATOR SHALL:

A. Perform in accordance with the approved and hereby incorporated annual Financial and Operating Plan (Operating Plan) attached as Exhibit A. *See related Provision IV-D.*

B. Ensure that the officers/agents of the Cooperator performing law enforcement activities under this agreement meet the same standards of training required of the officers/agents in their jurisdiction, or the State Peace Officers Standards of Training where they exist.

C. Provide uniformed officers/agents with marked vehicles to perform all activities unless agreed to otherwise in the Operating Plan.

D. Advise the Forest Service Principal Contact, listed in Provision IV-B, of any suspected criminal activities in connection with activities on NFS lands.

E. Upon the request of the Forest Service, dispatch additional deputies within manpower capabilities during extraordinary situations as described in Provision IV-I.

F. ~~Shall~~ furnish their tax identification number upon execution of this agreement pursuant to the Debt Collection Improvement Act of 1996, as amended by Public Law 104-134. The Cooperator also agrees that notice of the Forest Service's intent to use such number for purposes of collecting and reporting on any

delinquent amounts arising out of such Cooperator's relationship with the Government, has hereby been given.

G. Complete and furnish the Forest Service with Form FS-5300-5, Cooperative Law Enforcement Activity Report, identifying the number of crimes occurring on NFS lands. The report shall follow the FBI Uniform Crime Reporting groupings, Part I and Part II offenses. Offenses and arrest information shall be combined and reported for each crime. This report shall separate the crimes handled under this agreement from those handled by the Cooperator during regular duties.

H. Provide the Forest Service Principal Contact, listed in Provision IV-B, with case reports and timely information relating to incidents/crimes in connection with activities on NFS lands.

I. Bill the Forest Service for the Cooperator's actual costs incurred to date, displayed by separate cost elements, excluding any previous Forest Service payment(s) made to the date of the invoice, not to exceed the dollar amount(s) shown, in accordance with the Operating Plan. Billing frequency will be as specified in the Operating Plan. *See related Provisions III-B, IV-II and IV-O.*

J. Give the Forest Service or Comptroller General, through any authorized representative, access to and the right to examine all records related to this agreement. As used in this provision, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

K. Comply with all Federal statutes relating to nondiscrimination and all applicable requirements of all other Federal laws, Executive orders, regulations, and policies. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (40 U.S.C. 2000), which prohibits discrimination on the basis of race, color, disability, or national origin; (b) Title IX of the Education amendments of 1972, as amended (20 U.S.C. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; and Section 504 of the Rehabilitation Act of 1973 as amended (29 USC 794) which prohibits discrimination on the basis of disabilities. The nondiscrimination statement which follows shall be posted in primary and secondary Cooperator offices, at the public service delivery contact point and included, in full, on all materials regarding such Cooperators' programs that are produced by the Cooperator for public information, public education, or public distribution:

"In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability. (Not all prohibited bases apply to all programs.)

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, DC 220250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer."

If the material is too small to permit the full statement to be included, the material will at minimum include

the statement, in print size no smaller than the text, that "This institution is an equal opportunity provider.

III. THE FOREST SERVICE SHALL:

A. Perform in accordance with the Operating Plan attached as Exhibit A.

B. Reimburse the Cooperator for actual expenses incurred, not to exceed the amount shown in the Operating Plan. The Forest Service will make payment for project costs upon receipt of an invoice. Each correct invoice shall display the Cooperator's actual expenditures to date of the invoice, displayed by separate cost elements as documented in the Operating Plan, less any previous Forest Service payments. *See related Provisions II-I and IV-H.* The invoice should be forwarded as follows:

Send the original to:

***Ken Harp
Patrol Captain
San Bernardino National Forest
1824 S. Commercenter Circle
San Bernardino, CA, 92408
Phone (909) 884-6634 X3018***

Send a photocopy to:

***Rita Plair-Wears
Patrol Commander
U.S. Forest Service, South Zone
701 N. Santa Anita Ave.
Arcadia, CA, 91006
Phone (626) 574-5351***

IV. IT IS MUTUALLY UNDERSTOOD AND AGREED UPON BY AND BETWEEN THE PARTIES THAT:

A. The parties will make themselves available, when necessary to: provide for continuing consultation, exchange information, aid in training and mutual support, discuss the conditions covered by this agreement and agree to actions essential to fulfill its purposes.

B. The principal contacts for this agreement are:

***Shannon Kovich
Deputy Sheriff II
San Bernardino County
34282 Yucaipa Blvd.
Yucaipa, CA, 92399
Phone (909) 790-3105***

***Ken Harp
Patrol Captain
San Bernardino National Forest/Region 5
1824 S. Commercenter Circle
San Bernardino, CA, 92408
Phone (909) 884-6634 X3018***

C. This agreement has no effect upon the Cooperator's right to exercise civil and criminal jurisdiction, on NFS lands nor does this agreement have any effect upon the responsibility of the Forest Service for the enforcement of federal laws and regulations relative to NFS lands.

D. Any Operating Plan added to this agreement will be jointly prepared and agreed to by the parties. The Operating Plan shall at a minimum contain:

1. Specific language stating that the Operating Plan is being added to this agreement thereby subjecting it to the terms of this agreement.
2. Specific beginning and ending dates.
3. Bilateral execution prior to any purchase or the performance of any work for which reimbursement is to be made.
4. Specify any training, equipment purchases, and enforcement activities to be provided and agreed rates for reimbursement including the maximum total amount(s) for reimbursement.
5. An estimate of the useful life of any equipment purchased under this agreement as required by Provision IV-J.
6. Billing frequency requirement(s). *See related Provisions II-I and III-B.*
7. Designation of specific individuals and alternate(s) to make or receive requests for enforcement activities under this agreement.
8. A review and signature of a Forest Service Agreements Coordinator.

E. Nothing in this agreement obligates either party to accept or offer any Operating Plan under this agreement.

F. The officers/agents of the Cooperator performing law enforcement activities under this agreement are, and shall remain, under the supervision, authority, and

responsibility of the Cooperator. Law enforcement provided by the Cooperator and its employees shall not be considered as coming within the scope of federal employment and none of the benefits of federal employment shall be conferred under this agreement.

G. Federal Communication Commission procedures will be followed when operating radio(s) on either party's frequency.

H. Reimbursable Cooperator enforcement expenses must be: listed in an approved Operating Plan; expended in connection with activities on NFS lands; and expenses beyond those which the Cooperator is normally able to provide.

I. During extraordinary situations such as, but not limited to: fire emergency, drug enforcement activities, or certain group gatherings, the Forest Service may request the Cooperator to provide additional special enforcement activities. The Forest Service will reimburse the Cooperator for only the additional activities requested and not for activities that are regularly performed by the Cooperator.

J. Reimbursement may include the costs incurred by the Cooperator in equipping or training its officers/agents to perform the additional law enforcement activities authorized by this agreement. Unless specified otherwise in the Operating Plan, reimbursement for equipment and training will be limited to a pro rata share based, on the percentage of time an officer/agent spends or equipment is used under this agreement.

When reimbursement for items such as radios, radar equipment, and boats is being contemplated, reimbursement for leasing of such equipment should be considered. If Cooperator or Forest Service equipment purchases are approved in the Operating Plan, an estimate of the useful life of such equipment shall be included. When purchased, equipment use rates shall include only operation and maintenance costs and will exclude depreciation and replacement costs. Whether the Cooperator is reimbursed for lease/purchase costs, or the Forest Service purchases and transfers the equipment, the total cost for the equipment cannot exceed the major portion of the total cost of the Operating Plan unless approved by all parties in the agreement and shown in the Operating Plan.

When the Forest Service provides equipment, the transfer shall be documented on an approved property transfer form (AD-107) or equivalent. Title shall remain with the Forest Service, however, the Cooperator shall ensure adequate safeguards and controls exist to protect loss or theft. The Cooperator shall be financially responsible for any loss at original acquisition cost less depreciation at the termination of the agreement. The Cooperator is responsible for all operating and maintenance costs for equipment that the Forest Service has reimbursed the Cooperator for and/or transferred to the Cooperator under the AD-107 process or equivalent.

K. Equipment and supplies approved for purchase under this agreement are available only for use as authorized. The Forest Service reserves the right to transfer title to the Forest Service of equipment and supplies, with a current per-unit fair market value in excess of \$5,000.00, purchased by the Cooperator using

any Federal funding. Upon expiration of this agreement, the Cooperator shall forward an equipment and supply inventory to the Forest Service, listing all equipment purchased throughout the life of the project and unused supplies. The Forest Service will issue disposition instructions within 120 calendar days.

(Disposition of equipment shall be in accordance with regulations contained in 7CFR 3016.32 - Equipment.)

L. When no equipment or supplies are approved for purchase under an Operating Plan, Forest Service funding under this agreement is not available for reimbursement of Cooperator purchase of equipment or supplies.

M. When State conservation agencies have the responsibility for public protection in addition to their normal enforcement responsibility, their public protection enforcement activities may be included in Operating Plans and are then eligible for reimbursement. Reimbursement is not authorized to State Conservation Agencies for enforcement of fish and game laws in connection with activities on NFS lands.

N. Pursuant to 31 U.S.C. 3716 and 7 CFR, Part 3, Subpart B, any funds paid to the Cooperator in excess of the amount to which the Cooperator is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, the Federal awarding agency may reduce the debt by:

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1. Making an administrative offset against other requests for reimbursements.
2. Withholding advance payments otherwise due the Cooperator.
3. Taking other action permitted by statute.

Except as otherwise provided by law, the Federal awarding agency shall charge interest on an overdue debt in accordance with 4 CFR, Chapter II "Federal Claims Collection Standards" and 31 U.S.C., Chapter 37.

O. The Cooperator shall designate a financial institution or an authorized payment agent through which a Federal payment may be made in accordance with U.S. Treasury Regulations, Money and Finance at 31 CFR 208, which requires that Federal payments are to be made by electronic funds transfer (EFT) to the maximum extent possible. A waiver may be requested and payment received by check by certifying in writing that one of the following situations apply:

1. The Cooperator does not have an account at a financial institution.
2. EFT creates a financial hardship because direct deposit will cost the Cooperator more than receiving a check.
3. The Cooperator has a physical or mental disability, or a geographic, language, or literacy barrier.

To initiate receiving your payment(s) by electronic transfer, contact the National Finance Center (NFC) on the worldwide web at www.nfc.usda.gov, or call the NFC at 1-800-421-0323, or (504) 255-4647. Upon enrollment in the program you may begin to receive

payment by electronic funds transfer directly into your account.

P. Modifications within the scope of the agreement shall be made by mutual consent of the parties, by the issuance of a written modification, signed and dated by both parties, prior to any changes being performed. The Forest Service is not obligated to knd any changes not properly approved in advance.

Q. Either party, in writing, may terminate this agreement in whole, or in part, at any time before the date of expiration. Neither party shall incur any new obligations for the terminated portion of this agreement after the effective date and shall cancel as many obligations as is possible. Full credit shall be allowed for each party's expenses and all noncancelable obligations properly incurred up to the effective date of termination.

R. This agreement in no way restricts the Forest Service or the Cooperator from participating in similar activities with other public or private agencies, organizations, and individuals.

S. Any information furnished to the Forest Service under this agreement is subject to the Freedom of Information Act (5 U.S.C. 552).

T. This agreement is executed as of the date of the last signature and, unless sooner terminated, is effective through **September 30, 2010** at which time it will expire unless renewed.

The authority and format of this agreement have been reviewed and approved for signature.

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<u>/s/</u>	<u>11-4-05</u>
DENNIS TILTON,	Date
Deputy County Counsel	
<i>San Bernardino County Counsel</i>	

In witness whereof, the parties hereto have executed this agreement as of the last date written below.

<u>/s/</u>	<u>NOV 15 2005</u>
GARY PENROD, Sheriff-Coroner	Date
<i>San Bernardino County</i>	

<u>/s/</u>	<u>NOV 15 2005</u>
BILL POSTMUS, Chairman,	Date
Board of Supervisors	

<u>/s/</u>	<u>1/13/2006</u>
GENE ZIMMERMAN,	Date
Forest Supervisor	
<i>San Bernardino National Forest</i>	

<u>/s/</u>	<u>2/2/06</u>
GIL QUINTANA,	Date
Special Agent in Charge	
<i>Pacific Southwest Region</i>	

(OPTIONAL PROVISIONS)
(None)

EXHIBIT A**FINANCIAL AND OPERATING PLAN FOR
PATROL OPERATIONS**

This Annual Financial and Operating Plan (Operating Plan), is hereby made and entered into by and between the *San Bernardino* County Sheriff's Department, hereinafter referred to as the Cooperator, and the United States Department of Agriculture, *San Bernardino* National Forest, hereinafter referred to as the Forest Service, under the provisions of Cooperative Law Enforcement Agreement #06-LE-1105-1360-030 executed on _____. This Operating Plan is made and agreed to as of the last date signed below and is for the period beginning *October 1, 2005* and ending *September 30, 2006*.

I. GENERAL:

A. The following individuals shall be the designated and alternate representative(s) of each party, so designated, to make or receive requests for special enforcement activities:

Designated Representatives:

*Shannon Kovich
Deputy Sheriff
San Bernardino County
31282 Yucaipa Blvd.
Yucaipa, CA 92399
Phone (909) 790-3105*

*Ken Harp
Patrol Captain*

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***San Bernardino National Forest
1824 S. Commercenter Circle
San Bernardino, CA 92408
Phone (909) 884-6634 X3018***

Alternate Representatives:

***Claudette Babino, Staff Analyst
San Bernardino County
655 East Third St.
San Bernardino, CA 92415
Phone (909) 387-3725***

***Rita Wears
Patrol Commander
U.S. Forest Service, South Zone
702 N. Santa Anita Ave.
Arcadia, CA, 91006
Phone (626) 574-5352***

B. Reimbursement for all types of enforcement activities shall be at the following rates unless specifically stated otherwise:

Reserve Deputy: Base Rate \$37.07 per hour
Deputy: \$67.10 per hour
Corporal: \$72.98 per hour
Sergeant: \$83.16 per hour

II. PATROL ACTIVITIES:

A. Time schedules for patrols will be flexible to allow for emergencies, other priorities, and day-to-day needs of both the Cooperator and the Forest Service. Ample time will be spent in each area to make residents and

visitors aware that law enforcement officers are in the vicinity.

- Patrol on following Forest Service roads:

The Patrol Captain will determine designated patrol activities and locations. The captain or his designee will request patrol services and personnel resources from the county as needed. Personnel assigned to these details shall be deputies, reserve deputies or sergeants regularly assigned to the patrol division.

- Patrol in the following campgrounds, developed sites, or dispersed areas:

The Patrol Captain will determine designated patrol activities and locations. The captain or his designee will request patrol services and personnel resources from the county as needed.

Total reimbursement for this category shall not exceed the amount of:

\$35,000.00

*Station Breakdown: Big Bear: \$4,000,
Chino Hills: \$3,000,
Fontana \$8,000,
Phelan: \$4,000,
Twin Peaks: \$8,000,
Yucaipa: \$8,000.*

III. TRAINING: (Optional - When reimbursement of training costs is anticipated, this section should be completed.)

See Cooperative Law Enforcement Agreement Provision IV-J for additional information.

Total reimbursement for this category shall not exceed the amount of: \$2,000.00

IV.EQUIPMENT: *(Optional – When the leasing, loan or purchase and subsequent reimbursement of equipment costs are planned, this section should be completed.)*

See Cooperative Law Enforcement Agreement Provisions IV-J, IV-K and IV-L for additional information.

(If purchase is determined necessary, document the need for such a determination and make the documentation part of the Cooperative Law Enforcement Agreements' official file.)

Total reimbursement for this category shall not exceed the amount of: \$3,500.00

Total reimbursement under this Operating Plan shall not exceed the amount of: \$35,000.00

V. SPECIAL ENFORCEMENT SITUATIONS:
(Optional)

A. Special Enforcement Situations includes but is not limited to: Fire Emergencies, Drug Enforcement, and certain Group Gatherings.

B. Funds available for special enforcement situations vary greatly from year to year and must be specifically requested and approved prior to any reimbursement being authorized. Requests for funds should be made to the Forest Service designated representative listed in Item I-A of this Operating Plan. The designated representative will then notify the Cooperator whether funds will be authorized for reimbursement. If funds are authorized, the parties will then jointly prepare a revised Operating Plan.

(It is understood that at the time this Operating Plan is completed, the parties may be unaware of any particular special enforcement needs. However, completion of as much information as possible will expedite implementation should the need arise. Include, under each type of enforcement situation listed below, specific information that supplements Cooperative Law Enforcement Agreement Provisions II-D, II-E or IV-1. Items include but are not limited to: special contacts, documentation needed, limitations, notification, and approval procedures, mileage, hourly and per diem rates (if they vary from those listed under Section I-B of the Operating Plan), etc.

1. Drug Enforcement:
2. Fire Emergency:
3. Group Gatherings:

This includes but is not limited to situations which are normally unanticipated or which typically include very short notice, large group gatherings such as rock

concerts, demonstrations, and organizational rendezvous.

VI. BILLING FREQUENCY:

See Cooperative Law Enforcement Agreement Provisions II-I and III-B for additional information.

Reimbursements for operations shall be billed on a monthly basis. The Forest Service shall receive the final bill no later than December 31, 2006.

The authority and format of this Operating Plan have been reviewed and approved for signature.

/s/
DENNIS TILTON,
Deputy County Counsel

11-4-05
Date

In witness whereof, the parties hereto have executed this Operating Plan as of the last date written below.

/s/
GARY PENROD, Sheriff-Coroner
San Bernardino County

11-7-05
Date

/s/
GENE ZIMMERMAN,
Forest Supervisor
San Bernardino National Forest

1/13/05
Date

/s/
GIL QUINTANA,
Special Agent in Charge, R-5
Pacific Southwest Region

2/2/06
Date

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/s/

***BILL POSTMUS, Chairman
Board of Supervisors,
San Bernardino County***

NOV 15, 2005

Date

EXHIBIT B

**FY 2006, FINANCIAL AND OPERATING PLAN
for Controlled Substance Operations
USFS, San Bernardino National Forest –
Sheriff, San Bernardino County**

FY 2006 Total Allocation: \$20,000.00

San Bernardino County Fed Tax ID: 95-6002748

This Financial and Operating Plan for Controlled Substances (Operating Plan) is made and agreed for the period beginning October 1, 2005 and ending September 30, 2006. This Exhibit B Financial and Operating Plan for Controlled Substances supersedes the prior Exhibit B Financial & Operating Plan for Controlled Substances. Pursuant to IV. I of the Cooperative Law Enforcement Agreement between San Bernardino County Sheriff's Department and the U.S. Department of Agriculture, Forest Service, Agreement No. 06-LE-1105-1360-030, the following is in support of operations to suppress manufacturing and trafficking of controlled substances on or affecting the administration of National Forest System lands, with an emphasis on identification, apprehension and prosecution of suspects engaged in these activities:

A. *The Forest Service* agrees:

1. To reimburse the Cooperator for expenditures associated with the detection of locations and activities related to illegal production and trafficking of controlled substances, including;
 - a. Ground reconnaissance to identify and inventory locations and activities associated

with producing or trafficking controlled substances.

- b. Aerial reconnaissance to identify and inventory locations and activities associated with producing or trafficking controlled substances. Reconnaissance shall be performed using a Forest Service approved aircraft with a minimum of one Forest Service observer on board, unless waived by the Forest Service.
2. To reimburse the Cooperator for certain expenses resulting from investigative activities associated with investigating cases involving the illegal production or trafficking of controlled substances on or affecting the administration of National Forest system lands, including:
 - a. Surveillance operations to identify persons illegally producing or trafficking controlled substances.
 - b. Apprehension of persons suspected of producing or trafficking controlled substances.
 - c. Collection of evidence to support prosecution of persons suspected of illegally producing or trafficking controlled substances.
 - d. Prosecution of persons suspected of producing or trafficking controlled substances.

3. To reimburse the Cooperator for expenses resulting from the removal of cannabis plants from National Forest System lands. When circumstances indicate that removal of the cannabis plants is required before an investigation to determine the person(s) responsible can be completed, eradication operations must be approved by the Forest Service prior to taking place.

Note: The Cooperator retains the authority to eradicate cannabis plants from National Forest System lands without reimbursement from the Forest Service at its discretion.

4. To reimburse the Cooperator for the costs of purchasing supplies and equipment used exclusively for activities described in items A.1, A.2 and A.3 of this Plan. Purchases must be agreed to and approved by the Forest Service. Purchases may not exceed 10% of the total allocation without prior approval by the Forest Service Designated Representative.

B. The *Cooperator* agrees:

1. Within its capability, to perform the following activities on National Forest System lands:
 - a. Detect and inventory locations associated with illegal production or trafficking of controlled substances, and notify the Forest Service of such locations as soon as possible.

- b. Investigations to determine the person(s) responsible for manufacturing or trafficking controlled substances.
 - c. Upon request and prior approval of the Forest Service, remove cannabis plants from National Forest System lands.
- 2. To furnish all activity reports, crime reports, investigation reports, and other reports or records, resulting from activities identified in Section A of this Operating and Financial Plan to the effected Forests for review and forwarding to the Regional Office for processing.
 - 3. To furnish monthly itemized statements of expenses to the Forest Service for expenditures that may be reimbursed as identified in items A.1, A.2, A.3, and A.4 of this Plan.
- a. Mail copies of itemized billing statements to:

Cindy Maldonado
US Forest Service
701 N. Santa Anita Ave.
Arcadia, CA 91006

- b. Final billings for reimbursement must be received by the Forest Service before January 31, 2007 in order to receive payment.

C. The *Forest Service* and the *Cooperator* mutually agree to the following:

1. The following rate schedule will apply to all expenditures that may be reimbursed to the cooperator under this agreement;

Salary (base)	\$52.72 per hour,
Salary (overtime)	\$ base + ½ per hour
Per diem costs	\$34/M&IE + 55/lodging,
Travel	
(mileage and fares)	Actual documented costs
Helicopter flight time	Actual documented costs,
Supplies or equipment	Actual documented costs

2. The total expenditures of the Cooperator that may be reimbursed may not exceed \$20,000. The total expenditures for item A.4 may not exceed 10% of the total allocation.
3. The following persons are designated as representatives of each party;

Gary Penrod
 Sheriff, San Bernardino
 County
 909.387.3669

Denise Stokes
 Special Agent, Drug Enforcement
 34701 Mill Creek Rd.
 Mentone, CA 92359
 909.382.2901

Alternate Representatives:

Scott Campbell
Detective, San Bernardino
County
909.890.4929

Ken Harp
Patrol Captain, San Bernardino National Forest
1824 S. Commercenter Circle
San Bernardino, CA 92408
909.382.2698

IN WITNESS THEREOF, the parties hereto have
executed this Operating Plan.

/s/ _____
Bill Postmus, Chairman
Board of Supervisors,
San Bernardino County

NOV 15, 2005
Date

/s/ _____
Gary Penrod, Sheriff-Coroner
San Bernardino County

NOV 15, 2005
Date

/s/ _____
Gil Quintana,
Special Agent in Charge,
USDA Forest Service, Region 5

2/2/06
Date

[SEAL OF THE BOARD
OF SUPERVISORS
SAN BERNARDINO COUNTY]

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SIGNED AND CERTIFIED THAT A COPY OF THIS
DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

DENA M. SMITH

Clerk of the Board of Supervisors
of the County of San Bernardino

By /s/_____

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Law Enforcement Billing Summary
Drug Enforcement

County Federal Tax ID: 95-6002748	Agreement #: 06-LE-1105-1360-030
--------------------------------------	-------------------------------------

USDA Forest Service, NF: San Bernardino	County: San Bernardino
--	---------------------------

Law Enforcement Billing Summary	Month:	Year:
------------------------------------	--------	-------

Check appropriate block: <input type="checkbox"/> Coop Patrol <input checked="" type="checkbox"/> Controlled Substance Ops.

A. Total Patrol/Labor Hours	
B. Rate per Hour:	\$
C. Total Salary Reimbursement (subtotal 1)	\$
D. Other Allowable Reimbursements: (mileage, dispatch, court, clerical, equipment, etc.)	
1. _____	\$ _____
2. _____	\$ _____
3. _____	\$ _____
4. _____	\$ _____

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E. Total D1-D4 (subtotal 2)	\$
F. Total Invoice Reimbursement	\$

Certification Statement

County Sheriff		USF Patrol Captain - Special Agent	
I certify the above billing/invoice is accurate and complete.		I certify services have been received as stated in this invoice.	
Sheriff	Date	U.S. Forest Service	Date

APPENDIX I

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO**

Case No. GIC 861051

[Filed March 21, 2006]

COUNTY OF SAN BERNARDINO;)
and GARY PENROD, as Sheriff of)
the COUNTY OF SAN BERNARDINO,)
)
Plaintiffs,)
vs.)
)
STATE OF CALIFORNIA; SANDRA)
SHEWRY, in her official capacity as)
Director of California Department of)
Health Services; and DOES 1 through)
50, inclusive,)
)
Defendants.)

BILL LOCKYER

Attorney General of the State of California

LOUIS R. MAURO

Senior Assistant Deputy Attorney General

CHRISTOPHER KRUEGER

Supervising Deputy Attorney General

JONATHAN K. RENNER

Deputy Attorney General

State Bar No. 187138
1300 I Street
P.O. Box 944255
Sacramento, California 94244-2550
Telephone: (916) 445-8193
Facsimile: (916) 324-8835

Attorneys for State of California, and Sandra Shewry,
Director of the California Department of Health
Services

**NOTICE OF HEARING ON DEMURRER BY
THE STATE OF CALIFORNIA AND SANDRA
SHEWRY, DIRECTOR OF THE CALIFORNIA
DEPARTMENT OF HEALTH SERVICES, TO
COMPLAINT FOR DECLARATORY RELIEF
BY SAN BERNARDINO COUNTY AND
SHERIFF GARY PENROD**

DATE: June 2, 2006
TIME: 10:30 AM
DEPT: 60

JUDGE: Honorable Yuri Hofman

Action Filed: February 8, 2006

TO PLAINTIFFS AND THEIR COUNSEL OF
RECORD:

PLEASE TAKE NOTICE that defendants'
demurrer to the Complaint for Declaratory Relief filed
by the County of San Bernardino and Gary Penrod, as
Sheriff of the County of San Bernardino, has been set
for hearing on June 2, 2006, at 10:30 a.m., or as soon
thereafter as the matter may be heard in Department

492a

60 of the above-entitled court, located at Hall of Justice, Third Floor, 330 W. Broadway, San Diego, California.

DATED: March 20, 2006

Respectfully submitted,

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Attorney General of the State of California

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Senior Assistant Attorney General

CHRISTOPHER KRUEGER

Supervising Deputy Attorney General

/s/ Jonathan K. Renner

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO**

Case No. GIC 861051

[Filed March 21, 2006]

COUNTY OF SAN BERNARDINO;)
and GARY PENROD, as Sheriff of)
the COUNTY OF SAN BERNARDINO,)
)
Plaintiffs,)
)
vs.)
)
STATE OF CALIFORNIA; SANDRA)
SHEWRY, in her official capacity as)

Director of California Department of)
 Health Services; and DOES 1 through)
 50, inclusive,)
)
 Defendants.)
)

**DEMURRER BY THE STATE OF CALIFORNIA
 AND SANDRA SHEWRY, DIRECTOR OF THE
 CALIFORNIA DEPARTMENT OF HEALTH
 SERVICES, TO COMPLAINT FOR
 DECLARATORY RELIEF BY SAN
 BERNARDINO COUNTY AND
 SHERIFF GARY PENROD**

DATE: June 2, 2006
 TIME: 10:30 AM
 DEPT: 60

JUDGE: Honorable Yuri Hofman

Action Filed: February 8, 2006

**DEMURRER TO SAN BERNARDINO'S ENTIRE
 COMPLAINT FOR DECLARATORY RELIEF**

Defendants State of California, and Sandra Shewry, Director of the California Department of Health Services, hereby demur to the entire Complaint for Declaratory Relief filed by plaintiffs, County of San Bernardino and Gary Penrod, as Sheriff of the County of San Bernardino (together "San Bernardino"), on the ground that the pleading does not state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10, subds. (a) & (e).)

It is black letter law that courts should not entertain a lawsuit that does not present a justiciable controversy. (See 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, § 73, p. 132.) And an essential statutory prerequisite to a viable action for declaratory relief is an "actual controversy relating to the legal rights and duties of the respective parties." (Code Civ. Proc., § 1060.) Here, because San Bernardino cannot present an actual ripe controversy regarding the constitutionality of California's medical marijuana laws, this lawsuit fails to state a cause of action on which relief may be granted and must be dismissed.

Defendants' demurrer is based on the Complaint for Declaratory Relief, this Demurrer, and the attached Points and Authorities submitted concurrently herewith.

DATED: March 20, 2006

Respectfully submitted,

BILL LOCKYER

Attorney General of the State of
California

LOUIS R. MAURO

Senior Assistant Attorney General

CHRISTOPHER KRUEGER

Supervising Deputy Attorney
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/s/ Jonathan K. Renner

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496a

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO**

Case No. GIC 861051

[Filed March 21, 2006]

COUNTY OF SAN BERNARDINO;)
and GARY PENROD, as Sheriff of)
the COUNTY OF SAN BERNARDINO,)
)
Plaintiffs,)
)
vs.)
)
STATE OF CALIFORNIA; SANDRA)
SHEWRY, in her official capacity as)

Director of California Department of)
Health Services; and DOES 1 through)
50, inclusive,)
)
Defendants.)
)

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF DEMURRER
BY THE STATE OF CALIFORNIA AND
SANDRA SHEWRY, DIRECTOR OF THE
CALIFORNIA DEPARTMENT OF HEALTH
SERVICES, TO COMPLAINT FOR
DECLARATORY RELIEF BY SAN
BERNARDINO COUNTY AND
SHERIFF GARY PENROD**

DATE: June 2, 2006
TIME: 10:30 AM
DEPT: 60

JUDGE: Honorable Yuri Hofman

Action Filed: February 8, 2006

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INTRODUCTION

The instant complaint is nothing more than a request for a series of advisory opinions based merely on San Bernardino's dissatisfaction with the voters' decision to approve Proposition 215. San Bernardino County and Sheriff Penrod (together "San Bernardino") ask this court to undertake a sweeping review regarding the constitutionality of 22 California statutes related to medical marijuana. (Complaint 8:16-23.) But San Bernardino fails to establish an actual controversy regarding any of the challenged statutes and the named defendants. Because there is no ripe controversy this lawsuit fails to state a cause of action and must be dismissed.

In determining whether a case is ripe, and judicial review is appropriate, courts look at two criteria: (1) whether the dispute is sufficiently concrete so that declaratory relief is appropriate; and (2) whether the parties will suffer an imminent and significant hardship if judicial consideration is withheld. (*City of Santa Monica v. Stewart* (2005) 126 Cal. App. 4th 43, 64.) Here, San Bernardino does not have an actual concrete dispute with any of the defendants regarding any of the 22 statutes it seeks to challenge. San Bernardino and Penrod cannot create a ripe controversy by arguing that they are confused about whether they must enforce state law or federal law. (*Lockyer v. City and County of San Francisco* (2004) 33 Cal. 4th 1055 [local governments are without authority to disobey state statutes because local officials believe the statute may be unconstitutional]; *Gates v. Superior Court* (1987) 193 Cal.App.3d 205, 215 [decision of state law enforcement to make arrests for violations of federal law is voluntary].) Likewise, because medical

marijuana has been legal in California for almost a decade, and San Bernardino has not suffered any adverse consequences, neither the county nor the sheriff can make a straight-faced argument that they will suffer "imminent and significant hardship" without the immediate issuance of declaratory relief. (*City of Santa Monica v. Stewart, supra*, 126 Cal. App. 4th 43, 64.) Ultimately, the only potential risk for San Bernardino is that it will have to comply with state law.

San Bernardino cannot present an actual controversy regarding the constitutionality of California's medical marijuana laws; this lawsuit fails to state a cause of action on which relief may be granted and must be dismissed.

**A DEMURRER IS APPROPRIATE WHERE,
AS HERE, AN ACTION FOR DECLARATORY
RELIEF FAILS TO STATE A CAUSE OF ACTION**

An action for declaratory relief may properly be dismissed on demurrer when the complaint fails to state a cause of action. (*Jackson v. Teachers Insurance Co.* (1973) 30 Cal.App.3d 341, 344-345 [trial court did not err when it sustained defendant's demurrer without declaring right and liabilities as requested by plaintiff].) Furthermore, a court may sustain a demurrer on the ground that a complaint for declaratory relief fails to allege an actual or present controversy, or that it is *not justiciable*. (*Delaura v. Beckett* (Feb. 7, 2006, A109948) — Cal.App.4th — [certified for publication March 9, 2006].) And a court may sustain a demurrer without leave to amend if it determines that a judicial declaration is not "necessary or proper at the time under all the

circumstances.” (*Ibid.* [quoting Code Civ. Proc., § 1061].)

FACTS & BACKGROUND RELEVANT TO THIS ACTION

A. CALIFORNIA’S MEDICAL MARIJUANA LAWS

On November 5, 1996, California voters approved Proposition 215 which exempts patients and their caregivers from state laws prohibiting the possession and cultivation of marijuana when the possession or cultivation is for personal medical purposes, and the possession or cultivation is based on the recommendation of a physician. (Health & Saf. Code, § 11362.5.)¹ This law is titled the “Compassionate Use Act of 1996.” (*Ibid.*) Nothing in the Compassionate Use Act mandates specific action by San Bernardino. (§ 11362.5.)

On October 12, 2003, the Governor signed into law Senate Bill 420 which added Article 2.5, titled “Medical Marijuana Program,” to Chapter 6 of Division 10 of the Health and Safety Code. (§ 11362.7, et seq.) The Medical Marijuana Program creates a voluntary system through which individuals qualified to use or possess marijuana under the Compassionate Use Act may obtain a state identification card which clarifies that they should not be subject to state criminal laws relating to marijuana. (§§ 11362.765, 11362.775.) The

¹ All statutory cites are to the California Health and Safety Code unless otherwise indicated.

Medical Marijuana Program imposes primarily clerical duties on counties relating to the issuance of the state identification cards. (§§ 11362.71, 11362.72.) For example, each county must provide applications for the state card, review and process applications, maintain records, and issue the cards to qualified applicants. (§ 11362.71.)

B. SAN BERNARDINO'S LAWSUIT

On February 8, 2006, San Bernardino County filed the instant lawsuit which echos the legal theories contained in a companion lawsuit filed by San Diego County seven days earlier. (See Complaint; Plaintiffs' Notice of Related Case.) In recognition of the fact that the instant case copies San Diego's legal allegations verbatim, San Bernardino has filed a Notice of Related Case that advises the Court that "both cases present identical issues of law." (Plaintiffs' Notice of Related Case.)

Exactly like San Diego's lawsuit, San Bernardino seeks a declaration that California's Compassionate Use Act and Medical Marijuana Program are preempted by federal law under the supremacy clause of the United States Constitution. (Complaint at ¶ 21.) The limited exception to San Bernardino's generic demand (that all 21 medical marijuana statutes be declared unconstitutional) is that San Bernardino does not challenge subdivision (d) of Health and Safety Code section 11362.5. (*Ibid.*) San Bernardino's decision not to challenge this subdivision is surprising because it is this subdivision that actually exempts qualified patients and caregivers from prosecution for possession and cultivation of marijuana under state law.

Unable to identify an actual controversy of any kind, San Bernardino explains that it desires judicial involvement because the different approaches to medical marijuana taken by California and the federal government are resulting in "confusion and uncertainty for law enforcement agencies." (Complaint at ¶ 18.) To this end, San Bernardino explains that it believes California's medical marijuana laws create difficulties for Sheriff Penrod and his deputies because they "must enforce both state and federal drug laws."² (Id. at ¶ 19.) And San Bernardino points out that Sheriff Penrod and his deputies "are sworn to uphold the Constitution of the United States, as well as the Constitution of the State." (*Ibid.*) In support of their position that differences in state and federal laws regarding marijuana create an actual controversy, San Bernardino lists a series of hypothetical situations in which Sheriff Penrod and his deputies believe it may be challenging for them to decide whether to apply state or federal law. (*Ibid.*) Ultimately, San Bernardino asserts that it believes "[t]he County and Penrod are not obligated to comply with the requirements of [California's medical marijuana laws] since they are in direct conflict with federal law." (Complaint at 8:7-11.)

² San Bernardino's position that state law enforcement is obligated to enforce federal law is simply wrong. (*Gates v. Superior Court, supra*, 193 Cal App.3d at p. 215 [decision of state law enforcement to make arrests for violations of federal law is voluntary and an act of discretion on the part of the officer])

ARGUMENT**A. THE CONSTITUTIONALITY OF CALIFORNIA'S MEDICAL MARIJUANA LAWS IS NOT RIPE FOR JUDICIAL REVIEW.**

It is black letter law that courts should not entertain a lawsuit that does not present a justiciable controversy. (See 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, § 73, p. 132.) "The concept of justiciability involves the intertwined criteria of ripeness and standing." (*California Water & Telephone Co. v. County of Los Angeles* (1967) 253 Cal.App.2d 16, 23.) In the present case, San Bernardino's concern regarding whether California's medical marijuana laws are unconstitutional is not ripe for judicial review. There is no concrete legal dispute between San Bernardino and the defendants that can be resolved without improper judicial speculation, and San Bernardino will not suffer any harm if judicial consideration is withheld.

The ripeness requirement applies equally to actions for declaratory relief, and the declaratory relief mechanism does not enlarge the jurisdiction of courts over the parties and the subject matter. (*Hoyt v. Board of Civil Service Commissions of the City of Los Angeles* (1942) 21 Cal.2d 399, 403 [declaratory relief is not intended to enlarge the jurisdiction of courts over parties and subject matter].) And directly relevant to instant claims made by San Bernardino, a "mere dissatisfaction with the performance of either the legislative or executive branches, or disagreement with their policies does not constitute a justiciable controversy" sufficient to support a claim for

declaratory relief. (*Zetterberg v. State Depart. of Public Health* (1974) 43 Cal.App. 3d 657, 662.) In fact, an essential statutory prerequisite to a viable action for declaratory relief is an "actual controversy relating to the legal rights and duties of the respective parties." (Code Civ. Proc., § 1060.)

The California Supreme Court has explained that the ripeness requirement of a justiciable controversy prevents the courts from becoming bogged down issuing advisory opinions to individuals who merely seek guidance regarding the state of the law rather than the resolution of a specific factual dispute:

The ripeness requirement, a branch of the doctrine of justiciability, prevents courts from issuing purely advisory opinions. It is rooted in the fundamental concept that the proper role of the judiciary does not extend to the resolution of abstract differences of legal opinion. . . . [t]he ripeness doctrine is primarily bottomed on the recognition that judicial decision making is best conducted in the context of an actual set of facts so that the issues will be framed with sufficient definiteness to enable the court to make a decree finally disposing of the controversy.

(*Pacific Legal Foundation v. California Coastal Commission* (1982) 33 Cal.3d 158, 170.)

In California, "a two-pronged test is used to determine the ripeness of a controversy: (1) whether the dispute is sufficiently concrete so that declaratory relief is appropriate; and (2) whether the parties will suffer hardship if judicial consideration is withheld." (*City of Santa Monica v. Stewart, supra*, 126 Cal. App.

4th 43, 64 [internal citation omitted].) And in applying the test, “[u]nder the first prong, the courts will decline to adjudicate a dispute if ‘the abstract posture of [the] proceeding makes it difficult to evaluate . . . the issues,’ if the court is asked to speculate on the resolution of hypothetical situations, or if the case presents a ‘contrived inquiry.’ Under the second prong, *the courts will not intervene merely to settle a difference of opinion*; there must be an imminent and significant hardship inherent in further delay.” (*Ibid.*, [emphasis added; internal citations omitted] .)

With respect to the first prong, San Bernardino has completely failed to identify any dispute between it and the defendants that is sufficiently concrete to serve as a foundation for declaratory relief. San Bernardino asks the court to opine on the constitutionality of California’s medical marijuana laws because the county and Sheriff Penrod suffer from “confusion and uncertainty” about the state of the law. (Complaint at ¶ 18.) As evidence of this confusion, San Bernardino lists a number of situations in which it might be helpful for Sheriff Penrod to have an advisory opinion regarding the constitutionality of California law. (Complaint at ¶ 19.) But the fact that San Bernardino would find it helpful to have a judicial opinion on its supremacy clause theory does not create an actual controversy sufficient to allow judicial review of California’s medical marijuana laws.

With respect to the second prong, as a matter of law, San Bernardino will not suffer any “immediate and significant hardship” if judicial consideration is withheld. This conclusion is self-evident from the fact that medical marijuana has been legal in California for almost a decade. And the federal government’s position

that marijuana has “no currently accepted medical use” has been law since 1970. (21 U.S.C. § 812(b)(1)(B) [enacted October 27, 1970].) During the past decade, California’s Compassionate Use Act has been before state and federal courts of every level – including the California Supreme Court and the United States Supreme Court. (See, e.g., *People v. Mower* (2002) 28 Cal.4th 457; *Gonzales v. Raich* (2005) 545 U.S. __ [125 S.Ct. 2195].) And at no time has any court, state or federal, declared California’s Compassionate Use Act unconstitutional or preempted by federal law. ~~San~~ Bernardino’s concern that California’s medical marijuana laws present challenges for local law enforcement is not evidence of an imminent and significant hardship that flows from the existence of a ripe controversy.

B. SAN BERNARDINO HAS NO OBLIGATION TO ENFORCE FEDERAL CRIMINAL LAW AND DIFFERENCES BETWEEN STATE AND FEDERAL LAW DO NOT CREATE A RIPE CONTROVERSY.

California law does not require that state law enforcement enforce federal criminal statutes and, as a matter of law, San Bernardino is under no legal obligation to do so.³ (*Gates v. Superior Court, supra*, 193 Cal.App.3d at p. 215.) Likewise, the federal Controlled Substances Act does not impose any

³ Moreover, if even Sheriff Penrod chooses to voluntarily make arrests for possession of medical marijuana based on the federal Controlled Substance Act, state courts will be completely without authority to adjudicate the charges. (*People v. Tilehkooh* (2003) 113 Cal.App.4th 1433, 1445-1446 [“State tribunals have no power to punish crimes against the laws of the United States”].)

mandatory obligation on state or local officers to arrest people believed to be violating its terms.⁴ (See 21 U.S.C. §§ 801-904.) Because San Bernardino has no obligation to enforce federal criminal statutes, the allegation that “the conflict between state and federal law” somehow creates a ripe controversy for San Bernardino and Sheriff Penrod is without merit.

Similarly, local officials in San Bernardino County do not, as the county suggests, violate their oaths to uphold the state and federal Constitutions when they comply with state statutes that they believe may be unconstitutional. (Complaint at ¶ 19.) This exact argument was recently rejected by the California Supreme Court when it was raised by local officials in San Francisco who felt that California’s ban on same-sex marriage was unconstitutional:

The contention that the oath of a public official requiring him to obey the Constitution places upon him the duty or obligation to determine whether an act is constitutional before he will obey it is without merit.

(*Lockyer v. City and County of San Francisco*, *supra*, 33 Cal. 4th 1055, 1101.) The Supreme Court also explained that a local official upholds his or her oath to comply with the Constitution when he or she complies with state statutes:

⁴ In fact, the federal government cannot not impose a requirement that would conscript state law enforcement to enforce federal law. (*Printz v. United States* (1997) 521 U.S. 898,925 [“federal government may not compel the States to enact or administer a federal regulatory program”].)

[T]he oath to support and defend the Constitution requires a public official to act within the constraints of our constitutional system, not to disregard presumptively valid statutes and take action in violation of such statutes on the basis of the official's own determination of what the Constitution means.

(*Id.* at 1100.)

San Bernardino is not obligated to start enforcing federal criminal statutes that prohibit the use and possession of marijuana for any purpose. And neither San Bernardino's Sheriff nor his deputies will violate their oaths to uphold the Constitution when they comply with California's medical marijuana laws. The abstract and hypothetical enforcement concerns that San Bernardino raises regarding the differences between state and federal law cannot qualify as controversy appropriate for judicial resolution.

C. SAN BERNARDINO IS COMPLETELY WITHOUT AUTHORITY TO REFUSE TO COMPLY WITH STATE LAW AND CANNOT USE THE THREAT OF NON-COMPLIANCE TO CREATE AN ACTUAL CONTROVERSY.

San Bernardino's complaint asserts that "[t]he County and Penrod are not obligated to comply with the requirements of [California's medical marijuana laws] since they are in direct conflict with federal law." (Complaint at 8:7-11.) This statement is false. There can be no actual controversy regarding the fact that San Bernardino must comply with California's medical marijuana laws irrespective of whether local officials

believe medical marijuana laws conflict with their political philosophies, or their understanding of constitutional law. As a consequence, San Bernardino cannot manufacture an actual controversy, sufficient to justify declaratory relief, by mistakenly asserting it has the power to disobey state statutes on constitutional grounds.

Whether a local government has authority to ignore state statutes that it believes may be unconstitutional has also been recently addressed by the California Supreme Court. (*Lockyer v. City and County of San Francisco, supra*, 33 Cal. 4th 1055.) Local officials are completely without authority to refuse to comply with state statutes based on their own opinion of whether the statute is constitutional⁵:

To begin with, most local executive officials have no legal training and thus lack the relevant expertise to make constitutional determinations. Although every individual (lawyer or nonlawyer) is, of course, free to form his or her own opinion of what the Constitution means and how it should be interpreted and

⁵ The Supreme Court suggested that the better approach would be for local government officials to comply with the law and to encourage the citizens actually injured by the law to bring a legal challenge. (*Lockyer v. City and County of San Francisco, supra*, 33 Cal. 4th at p. 1199.) Here, according to San Bernardino, the truly injured party is the federal government. Thus, it seems fairly obvious that the United States Attorney General is capable of defending the federal Controlled Substance Act from potentially conflicting state laws. And, yet, in almost 10 years the federal government has not brought such an action in California or any of the other states that have similar laws.

applied, a local executive official has no authority to impose his or her personal view on others by refusing to comply with a ministerial duty imposed by statute.

(*Id.* at p. 1107 [emphasis added].) Likewise, the Supreme Court expressly rejected the argument that the federal supremacy clause gives local officials the authority to disregard a state statute they believe may be preempted by the federal law:

In light of the high court's repeated statements that federal executive officials generally lack authority to determine the constitutionality of statutes, the city's claim that the federal supremacy clause itself grants a state or local official the authority to refuse to enforce a statute that the official believes is unconstitutional is plainly untenable.

(*Id.* at p. 1111 [emphasis added].)

In the present case, San Bernardino has no authority to disregard California's medical marijuana laws simply because county officials feel that the medical marijuana laws may be preempted. San Bernardino cannot create an actual controversy by falsely asserting that it is not obligated to comply with state laws regarding medical marijuana.

CONCLUSION

This case does not present a ripe controversy that is appropriate for judicial review, and San Bernardino's attempt to use its professed confusion about the relationship of state and federal law to

create an actual controversy fails to satisfy the legal test for ripeness. San Bernardino's attempt to get an advisory opinion regarding the constitutionality of 22 statutes should be rejected and this case should be dismissed.

DATED: March 20, 2006

Respectfully submitted,

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Deputy Attorney General

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Sandra Shewry, Director of the California
Department of Health Services**

APPENDIX J

**IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE**

**APPEAL NO. D050333
CASE NO. GIC860665/GIC861051**

[Dated November 16, 1006]

COUNTY OF SAN DIEGO,)
PLAINTIFF AND APPELLANT #1,)
)
COUNTY OF SAN BERNARDINO, ET AL.,)
PLAINTIFFS AND APPELLANTS #2,)
)
vs.)
)
SAN DIEGO NORML, ET AL.,)
DEFENDANTS AND RESPONDENTS.)
)
WENDY CHRISTAKES, ET AL.,)
THIRD-PARTY INTERVENORS AND)
RESPONDENTS.)
)

VOLUME 1 OF 1

**FROM SAN DIEGO COUNTY
HON. WILLIAM R. NEVITT, JR., JUDGE**

518a

NOVEMBER 16, 2006
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SUSAN PLATT, CSR #10266
OFFICIAL REPORTER

519a

**IN THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA IN AND FOR
THE COUNTY OF SAN DIEGO**

CASE NO. GIC860665

[Dated November 16, 2006]

COUNTY OF SAN DIEGO,)
PLAINTIFF,)
)
v.)
)
SAN DIEGO NORML, A CALIFORNIA)
CORPORATION,)
DEFENDANTS.)
)
AND ALL CONSOLIDATED AND)
INTERVENING ACTIONS.)
)

DEPARTMENT 64
HON. WILLIAM R. NEVITT, JR., JUDGE
PAGES 1-58

REPORTER'S TRANSCRIPT

NOVEMBER 16, 2006

APPEARANCES:

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[p.1]

SAN DIEGO, CALIFORNIA,
NOVEMBER 16, 2006, P.M.

THE COURT: Good afternoon and welcome to the Court.

If you have a cell phone, please either turn it off or make sure it's on the silent mode. If you have a camera or any device that records video or audio, you're not allowed to use that. This prohibition does not apply to those to my right who have preauthorized permission.

All right. The Court calls the Matter of County of San Diego versus San Diego Norml, Case Number GIC860665.

Would Counsel please state their respective appearances beginning with my far left.

MR. WALL: Walter Wall representing the County of Merced and the Sheriff of the County of Merced, Mark Pazin.

THE COURT: Thank you.

MR. GREEN: Good morning, Your Honor. Alan Green on behalf of the County of San Bernadino and its Sheriff, Gary Penrod.

MR. LARKIN: Good afternoon, Your Honor. Charles Larkin, Deputy County Counsel, on behalf of the County of San Bernadino.

THE COURT: Thank you.

MS. PILSECKER: Ellen Pilsecker for the County of San Diego.

THE COURT: Thank you.

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MR. BUNTON: Good afternoon, Your Honor. Thomas Burton, Senior Deputy County Counsel, on behalf of Plaintiff County of San Diego.

THE COURT: Thank you.

MR. WOLF: Good afternoon, Your Honor. Adam Wolf with the ACLU Drug Law Reform Project for the Patient Intervenors. With me, I have Graham Boyd, the Director of the ACLU Drug Law Reform Project.

THE COURT: Thank you.

MS. LOPEZ: Good afternoon, Your Honor, Leslie Lopez, Attorney General's Office, on behalf of the State Defendants.

THE COURT: Thank you.

MR. ELFORD: Good afternoon, Your Honor. Joe Elford on behalf of the Americans for Safe Access and Patient Intervenors.

THE COURT: Thank you.

MR. BLANK: Good afternoon, Your Honor. Jeremy Blank on behalf of San Diego Norml, Incorporated.

THE COURT: Thank you.

Is there anyone who does not have a copy of the Court's tentative ruling that was issued this morning?

I have placed time limits of one hour per side. My Clerk will be keeping time, and she will give each side a ten-minute and three-minute warning as your time is almost expired. I'd like everyone to please speak from the lectern, and if you could, please state your name again for the benefit of the court reporter before you begin to speak

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so that we have an accurate record.

Is there anything we need to address, Counsel, before I entertain argument?

MR. WALL.

MR. WALL: Yes, there is, Your Honor. I believe November 13th this Court wanted to know in these proceedings whether the other counties joined the County of Merced's argument with respect to the California constitutional issue. It's my understanding that County of San Diego and County of San Bernadino do, in fact, join our argument.

MR. GREEN: That's correct, Your Honor.

THE COURT: Thank you, Mr. Green.

MR. BUNTON.

MR. BUNTON: That's correct, Your Honor.

THE COURT: Thank you.

There was another issue that occurred to me as I reviewed the papers, and that is the Merced Plaintiffs and the Patient Intervenors request injunctive relief in their complaint, but there is very little said about that or has been very little said about that. So let me ask the Merced Plaintiffs first, are they still seeking an injunction?

MR. WALL: Your Honor, in light of your tentative ruling, that particular issue, injunction relief, will not be -- should be removed from argument today.

THE COURT: Well, let me emphasis that this is a tentative ruling. It may or may not change, but I think we should all know whether or not Merced Plaintiffs are

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seeking injunctive relief, and I'll be asking the same thing of the patient intervenors with respect to their injunctive relief. As I said, so little was said about it in the papers that I thought it was worth clarifying.

MR WALL: Yes, Your Honor. Again -- and I said in light of your tentative. What I mean to say is that we don't intend to pursue that injunctive relief argument.

The Court: Thank you. So that issue is out of the case?

MR. WALL: As far as we're concerned, yes.

The Court: Thank you.

With respect to the Patient Intervenor, Mr. Wolf, will you be addressing that?

MR. WOLF: I will, Your Honor. Would you like us to wait until our turn or --

THE COURT: Well, if you could just tell me now whether your clients still seek injunctive relief, and then I'll let you address it perhaps later, but I just think we should all know whether or not it's still an issue.

MR. WOLF: I understand. We will address it later. The answer is sort of it depends, but we're not taking it out of our complaint and we're still requesting one, yes.

THE COURT: Thank you.

All right. Anything else we need to address prior to beginning argument?

All right. In light of the tentative, would Plaintiffs like to go first?

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MR. BUNTON: Yes, Your Honor.

Thomas Bunton, Senior Deputy County Counsel, on behalf of the Plaintiff, County of San Diego.

Your Honor, going to the tentative ruling and what I think the heart of this case is is whether or not the California medical marijuana laws are preempted by the controlled substances act in a single convention on

narcotic drugs. The first thing before getting to that question is what is the proper test to be applied in determining whether or not there is a conflict.

Under binding United States Supreme Court and California Supreme Court precedent, in order to decide whether there is a conflict and therefore a preemption, the test is twofold, one, whether it's impossible to comply with both federal and state law, and two, whether state law stands as an obstacle to the accomplishment of the purposes and objectives of the federal law. This court's tentative looks at the first issue but does not look at the second, concluding apparently that the only test that's applied is the first test and that you don't consider whether or not the federal law -- I'm sorry -- the state law stands as an obstacle to the accomplishment of the purposes and objectives of the federal law. We think that ruling is incorrect.

It's been the established law of the United States and the United States Supreme Court that obstacle, whether it stands as an obstacle, is a portion of the test to determine whether there is a conflict before the Control

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Substances Act was passed, and we cite two cases from 1963, *Florida Lime and Avocado Growers, et al., versus Paul*, Supreme Court 373 U.S. 132 From 1963, a second case from the United States Supreme Court, also a 1963 case, *Head Versus New Mexico Board of Examiners and Optometry*, 374 U.S. 424, a 1963 case from the United States Supreme Court.

So that was the backdrop under which Congress passed the Controlled Substances Act in 1970, and in section 903 of the Controlled Substances Act, they specifically state that a law that conflicts or is a positive conflict state law is preempted by the Controlled Substances Act. Given the fact that conflict has been interpreted legally to mean either it's physically impossible to comply with both state and federal law or that it stands as an obstacle to the accomplishment of the purposes and objectives of federal law. In essence, that use of the term "conflict" as used in section 3 must be given its legal interpretation as interpreted by United States Supreme Court, and that is the law of both the United States Supreme Court and the California Supreme Court.

THE COURT: I recall directly from your Papers, Mr. Bunton, that you think "positive conflict" is a redundant statement because there is no such thing as a negative conflict.

MR. BUNTON: That's right, Your Honor. We've looked to see if there is anything that is termed a negative conflict which would connote that "positive conflict" means something different, and we haven't been able to find

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anything that denotes any difference between anything finding that there's a negative conflict here.

In addition to that rule of law, of course, we have case law that's interpreted section 903 in California and is applied to obstacle preemption test, and of

course, that authority is binding on this Court as well. *People versus Gard*, 76 Cal.App. 3d 998, considered whether a state law was in conflict with the Controlled Substances Act, cited section 903, the preemption provision, and also says "But federal law preempts if only under the circumstances of the particular case, the state law stands as an obstacle to the accomplishment and execution of the bulk purposes and objectives of congress."

So the California Court of Appeal has specifically said in a case involving the Controlled Substances Act that the test that must be considered is whether it stands as an obstacle to the purposes and accomplishments of the objectives of the federal law, and it's telling that the county cited this case in its opposition brief, and nobody on the other side has referred to it, has not attempted to distinguish it, hasn't discussed the case at all.

Other cases have supported the county's interpretation of section 903 of the Controlled Substances Act. In *People versus Boultinghouse*, which the County cited and which both parties have referred to, the court stated the purpose of section 903 as follows. It stated, "when it comes to criminalizing illicit drug activity, Congress has

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made it made it clear that it did not intend to prevent the states from getting in on the Act." Again, that supports the County's position that states are free to enact legislation that goes beyond the Federal Controlled Substances Act. They can prohibit conduct that is not specifically prohibited by the Federal

Controlled Substances Act. Why? Because that supports the purposes and objectives of the federal law, it doesn't undercut it, and legalizing and authorizing individuals to use marijuana for any purpose undercuts the purposes and objectives of the Federal Controlled Substances Act.

Assenberg versus Anacortes Housing Authority, another case the county cited involving section 903, the preemption clause and the Federal Controlled Substances Act, that's at 2006 U.S. Dist. Lexis 34002 (Western District of Washington 2006). The argument was specifically made there that because of section 903 Washington's medical marijuana law was not preempted by the Federal Controlled Substances Act. The district court in that case rejected that argument finding indeed there was a conflict. Within the meaning of 903, there was a positive conflict between the Washington medical marijuana law because it authorized the use of marijuana and the Federal Controlled Substances Act which prohibits for any purpose the use of marijuana.

Again, this is a case that the county cited in its opposition brief. In neither of the briefs submitted either by the intervenors or the state do they respond in any way to that case and the fact that the Court there

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concluded that the medical marijuana laws of Washington were indeed a positive conflict or in a positive conflict with the Federal Controlled Substances Act. Neither the State nor the Intervening Defendants have cited a single case in which a court

anywhere has concluded that a less restrictive regulation of drugs that are governed by the controlled substances act is not preempted. They've not cited a single case holding that.

The only cases that they have cited finding nonpreemption and generally true with respect to specifically cases under the Controlled Substances Act but also true generally with the respect to the preemption cases that they've cited is cases where there has been more stringent regulation for additional regulation imposed, and in those circumstances the courts haven't found a conflict between the controlled substances act and state law or generally between the federal law and the state law. Why is that? The reason is because when you -- as the *People versus Boultinghouse*, when you also get in on the act by criminalizing additional conduct, you're acting in furtherances of the purposes and objectives of the federal law.

The federal law, and it's crystal clear from the *Gonzales versus Raich* decision, was designed to prevent drug abuse, and it recognized in doing that that one of the ways that drug abuse was occurring is that there were legitimate medical use for some drugs, but those drugs were being diverted from legitimate medical use to illegitimate

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medical use, and Congress specifically sought to tackle that problem.

California law stands as an obstacle to the accomplishment of that in two ways. One is it

authorizes individuals to use marijuana for medical purposes. Congress has specifically declared when it enacted the Controlled Substances Act that there is no medically acceptable use of marijuana, can't be used, but California has authorized individuals to use it, to possess it, and to cultivate it, and that stands as an obstacle. In addition, it goes unrefuted the position of the Supreme Court in *Raich*, as well as the county's position that it's inevitable that the marijuana that is being grown, consumed, and used for medical purposes will be diverted into nonmedical purposes. It will be sold, it will be stolen, things will happen so it will be converted from legitimate to illegitimate purposes.

Now, it's the position of the other side, with respect to 903, that that demonstrates congressional intent to narrow the normal conflict preemption analysis to just half of the conflict preemption test, and that's the half which says where it's physically impossible to comply with both the federal and state law. That premise is faulty for this basic reason. It assumes that Congress therefore enacted 903 because it intended to allow states to enact laws that are an obstacle to the accomplishment of the purposes and objectives of federal law. That just doesn't make any sense.

THE COURT: What is the purpose of section

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903?

MR. BURTON: The purpose of 903 is to demonstrate that there's not filed preemption here, Your Honor. It's to demonstrate that Congress intended to allow states to enact laws, and this is the

words of legislative history, that are mutually supportive, and that's when Congress enacted 903 and recited the legislative history of 903, and it means that the interplay between state and federal law that under the CSA states are allowed to enact laws that are mutually supporting, meaning if they want to also criminalize conduct that is also prohibited by the Federal Controlled Substances Act, that's mutually supporting.

If they want to go beyond the controlled substances act and criminalize conduct that the Federal Criminal Statute or the Federal Controlled Substances Act doesn't criminalize, that is also mutually supporting, but authorizing individuals to use drugs that are strictly prohibited under federal law is not mutually supporting of the federal objective or the federal law in any way. In fact, they severely undermine the federal law.

Now, the only two cases that the Plaintiffs have been able to -- excuse me -- have been able to cite in support of their argument that somehow 903 intended to cut in half the normal cases that are laws that are found to be preempted in order to limit it to just those laws that are physically impossible is a case called *Southern Blasting, Incorporated, versus Wilkes County*, a Fourth Circuit case

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decided in 2002, and that case involved the federal Hazardous Materials Transportation Act.

Well, one thing we know for sure and that is when Congress enacted the Federal Controlled Substances

Act in 1970, they weren't relying on the Fourth Circuit's interpretation of the Federal Hazardous Materials Transportation Act in 2002. They were relying on established Supreme Court cases interpreting conflict preemption and those cases as we cited from the 1960's were federal supreme court cases that said a conflict can occur where a law stands as an obstacle to the accomplishment and purposes of the objectives of congress.

Now again, in *Southern Blasting*, the situation was entirely different than it is here. In that case it was more stringent federal regulation that was involved, and so, of course, the more stringent federal regulation isn't going to be an obstacle to the accomplishment of the purposes and objectives of the federal law, and that's what the court recognized saying a state or locality's imposition of additional requirements above a federal minimum is unlikely to create a direct or positive conflict with federal law. Rather, a conflict is more likely to occur when a state or locality provides the compliance where the federal standard is not mandated. Again, certainly, the California laws are much closer to the latter than the former. This isn't an imposition of additional requirement which further the purposes and objectives. This is authorizing conduct prohibited by federal law which undermines the purposes and

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objectives of the federal legislation.

Moreover, if the Court was going to make the radical step that Plaintiffs contend that it made, and that is to say that when Congress enacted the

Preemption Provision in that law that it intended to limit preemption to one of the two ways in which the Supreme Court has said that there is preemption. You would have thought that that would have been explicit and that the court would have explicitly said there has been an argument made or here's what we find, that there is a difference here in this preemption clause and that Congress intended to limit preemption, conflict preemption in a way that is different than how the Supreme Court has interpreted conflict preemption, but there's no statement by the Court of that whatsoever, and in the opinion, the Court specifically refers to the fact that preemption can occur where a law stands as an obstacle to the accomplishment of the purposes and objectives of the federal legislation. It's just simply not possible that the Court made that leap that Congress intended such a radical departure from normal supreme court conflict law and didn't say it explicitly.

The same goes for the other case, and that's *Gonzales versus Raich* -- I'm sorry -- *Gonzales versus Oregon* that is cited by the plaintiffs, and in that case -- I've just been alerted. I keep -- I tend to be a defense lawyer for the most part, and I keep mixing up plaintiffs and defendants. Excuse me on that. We, of course, are the plaintiffs here in this case. The defendants also cite the

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Gonzales versus Oregon case. Actually they don't rely on the majority opinion. They rely on a three-judge dissent issued by Justice Scalia in that case in which he was not specifically addressing the issue here as to whether or not there had been a narrowing in 903 of

the Supreme Court's normal preemption test, whether Congress intended to limit that test to only half the ways in which state laws can be found to be in conflict with federal laws, and that should not be followed for two reasons.

One, of course, is a dissenting case is not precedent. The second reason is, if you look at the decision as a whole, it's clear that Justice Scalia was giving one example of a way in which there could be a positive conflict under 903. In fact, he was giving an opposite example of what wasn't a conflict. He wasn't saying, and he didn't purport to say, that that is the only circumstance in which there could be a positive conflict under the controlled substances act.

Moreover, if Justice Scalia were advocating in favor of a narrowing of the Supreme Court's preemption test or if Justice Scalia were saying that in 903 Congress intended to limit federal preemption to just one of two ways in which the United States Supreme Court has said there is federal preemption, there is preemption conflict preemption under the supremacy clause, he would have again stated that directly. That's a big enough issue, an important enough issue that one would expect that Justice Scalia would have addressed it directly and said it directly.

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We are finding that when congress enacted 903 they intended to limit the scope of federal preemption conflict preemption to just those circumstances in which it was an impossibility, and he certainly would have cited the legislative history to show in some way that that was the intent of Congress, but the only

legislative history that has been cited is the legislative history of the county showing that it was intended to be mutually supporting and the patient intervenors have cited legislative history in the form of a colloquy between two representatives indicating that when it comes to more severe restrictions, more stringent restrictions, the Federal Controlled Substances Act doesn't preempt. That in no way supports an argument that a state can authorize conduct that federal law prohibits.

THE COURT: With that background, what was the purpose of Congress inserting the phrase "positive conflict?"

MR. BUNTON: I think Congress was intending to specify that if there's a conflict between federal and state law that there is -- it is indeed preempted. State law is indeed preempted under those circumstances. So they didn't intend to occupy the field, we know that, and we admit that, that they're not prohibiting all federal law. Clearly, every court, I think, that has addressed this issue said that they didn't intend to preempt laws that are more stringent or stricter than the federal law. That's *People versus Boultinghouse* which said when it comes to

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criminalizing conduct, illicit drug activity, as they refer to it, Congress intended to allow the states to get in on the Act.

So what's left? What else could be found to be in conflict there? It's clear that Congress intended there to be laws to be found in conflict, well, that are laws

that are either an authorization, in this case an authorization for someone to do something that is prohibited by federal law, and how do you get that that's a conflict? Well, because when you do that, that's going to be contrary to the purposes and objectives or an obstacle to the purposes and objectives of the federal law, and I think that's clear that what 903 means, because they intended state and federal law to be mutually supporting, and one thing, it defies the logic to conclude that they intended for state laws to be an obstacle to the accomplishment of purposes and objectives of the federal law.

If they wanted states to enact those kind of laws that were an obstacle, I don't know why they would have bothered to enact the federal law in the first place because the federal law, if it can be undermined by activities and actions of the state, will not accomplish its purposes and objectives of combatting drug abuse, and it's clear that the medical use of marijuana is drug abuse within the eyes of the Federal Controlled Substances Act because Congress has declared that there is no medically accepted use of marijuana, and so therefore, it's drug abuse under the Federal Controlled Substances Act.

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A large portion of the plaintiffs' argument or -- I'm sorry -- the defendants' argument has been based upon the contention that positive conflict preemption is somehow different from something called obstacle preemption -- excuse me -- but United States Supreme Court and the California Supreme Court have held otherwise. Conflict preemption occurs in one of two ways where it's physically impossible to comply with

both the federal and state law or where there is an obstacle to the accomplishment of the purposes and objections. So obstacle preemption is simply a subset of conflict preemption.

When Congress said that laws that conflict -- state laws that conflict with the Controlled Substances Act are preempted, that's what test they intended to incorporate because that was the established test of the United States Supreme Court at the time they passed the Federal Controlled Substances Act, and certainly, any kind of interpretation, which again, we don't think the courts even go that far, but even to the extent that they might, we know that Congress in 1970 wasn't relying on what the Fourth Circuit says about the Federal Hazardous Materials Act in 2002 and any statements in a dissenting opinion that Justice Scalia had to say in 2006 in *Gonzales versus Raich*.

So we think when the proper test is applied as to whether it's an obstacle for the purposes and objectives of Congress, it's clear that this law is an obstacle to those purposes and objectives. It authorizes individuals to use marijuana for prohibited uses, medical uses, under

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federal law.

Now, the argument has been made by the defendants that the identification cards are consistent with the purposes of the Controlled Substances Act because they allow sheriffs or other law enforcement officials to distinguish between recreational users of marijuana and those who use it for medical purposes.

That's not consistent with the purposes of the federal law because in the eyes of the federal law they're both the same. They're both committing a violation of federal law, and within the eyes of the federal system, they're both drug abusers. So it doesn't accomplish the purposes and objectives.

The intervening defendants have also argued that it's consistent with the purposes and objectives of the federal law because the feds -- the federal government wanted to allow the states to have wide latitude enacting laws regarding illicit drugs, but that isn't the purpose of the law either. The states had -- before the Controlled Substances Act was enacted, the states were the only ones that were in the field of regulation and had *cart blanche* to do whatever regulations or nonregulations that they deemed appropriate, and so we know that isn't the purpose, and the fact that, under 903, Congress intended to allow states to enact laws that were mutually supporting wasn't the purpose.

It was just the means to the purpose, and the means to allow states to also criminalize those activities or to criminalize them or punish them more severely or to

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enact more stringent requirements was just simply a means to accomplishing the purpose of combatting drug abuse which also involved, of course, preventing the diversion from legitimate sources to illegitimate sources of drugs. So we think this law is, in fact, because it authorizes conduct that federal law prohibits and because it stands as an obstacle to the

accomplishment of the purposes and objectives, it is, in fact, preempted.

Addressing a couple of the other areas that have been raised here, we think the court's tentative ruling is correct, that the County does have standing here to challenge the medical marijuana laws. The defendants admit that the County has standing to challenge the cards. You can't look at the cards in a vacuum. You have to look at what the cards represent, and they represent an authorization by California to the use, possession, and cultivation of marijuana for medical purposes.

So the County has the ability, has standing to challenge those provisions as well because the card, in and of itself, is a card, but it's what the card represents that is significant, and it represents California's authorization to use, possess, and cultivate marijuana for medical purposes, and it requires an affirmative act on behalf of the County to give cards to individuals to allow them to engage in conduct that everyone admits violates federal law, and so the county clearly has standing here with respect to a challenge to California medical -- California's medical marijuana laws.

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The other main issue that's been raised here is the Tenth Amendment, and in *Gonzales versus Raich*, the United States Supreme Court resolved that that prohibition under the Controlled Substances Act as it applies to Marijuana grown and consumed exclusively within the state of California is within the ambit of the commerce clause "power of congress." That issue has

been resolved, and the congress clause "power," when it relates to the Tenth Amendment, is significant.

In the *Hodel versus Virginia Surface Mining and Reclamation Association, Inc.*, case, 452 U.S. 264, the Court specifically addressed this issue when it comes to efforts to regulate not the states as states but to regulate individual conduct and to preempt contrary state law, and it states, "appellees' claims accurately characterize the act insofar as it prescribes federal minimum standards governing surface coal mining, which a state may either implement itself or else yield to a federally administered regulatory program. To object to this scheme, however, appellees must assume that the Tenth Amendment limits congressional power to preempt or displace state regulation of private activities affecting interstate commerce. This assumption is incorrect.

"Although such congressional enactments obviously curtail or prohibit the states' prerogatives to make legislative choices respecting subjects the states may consider important, the supremacy clause permits no other result.

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"Thus, Congress could constitutionally have enacted a statute prohibiting any state regulation of surface coal mining. We fail see why the Surface Mining Act should become constitutionally suspect simply because Congress chose to allow the states a regulatory role. Contrary to assumption by both the district court and appellees, nothing in National League of Cities suggests that the Tenth Amendment

shields the states from preemptive federal regulation of private activities affecting interstate commerce."

Simply put, the Tenth Amendment doesn't apply here because the Congress in the CSA is regulating individual conduct and preempting contrary state law. The only authority that's offered in support of the Tenth Amendment argument is just -- Judge Kozinski of the Ninth Circuit's concurring opinion in the *Conant* case, but intertwined with Judge Kozinski's Tenth Amendment analysis is his analysis under the commerce clause saying that -- and this was again before the Supreme Court decided the *Raich* case.

In *Conant* in his concurring opinion, Judge Kozinski concluded that the commerce clause -- that CSA was beyond the commerce clause authority of the congress to the extent it attempted to regulate the cultivation, use, and possession of marijuana grown in California legalized under California law. Of course, that proved to be an accurate prediction of what the Supreme Court would do. So the Supreme Court undercut one of the bases upon Judge

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Kozinski's concurrence concluding that he was wrong and that the commerce clause did allow the CSA or the Congress under the CSA to prohibit the intrastate cultivation, use, and possession of marijuana under California law.

His statement with respect to -- his statements with respect to the Tenth Amendment then, which were intertwined with his congress clause argument, are equally suspect. The commandeering doctrine,

which was developed in the *Hodel* case in dicta and then actually used by the Supreme Court in the *New York versus United States* case and in the *Printz* case, involves situations where it's an actual order to the states themselves to do something. In the *New York versus United States* case, it was you shall take possession of low-level radioactive waste. In the *Printz* case, it was that local law enforcement officials were required under federal law to do background checks for purposes of enforcing the federal Brady Law gun control ordinance.

In those cases where it was direct orders to the states, they found that the commandeering doctrine would apply, but the cases have been crystal clear that the Tenth Amendment does not apply where it's individual conduct that's being regulated and it's simply preempting a contrary state law that is happening, and that's what's happened with respect to the Controlled Substances Act here, not regulating the states directly. It's simply saying that their contrary law is preempted, and there is no doubt that Congress could have, without violating the Tenth Amendment, Kozinski's concurrence concluding that he was wrong and that the commerce clause did allow the CSA or the Congress under the CSA to prohibit the intrastate cultivation, use, and possession of Marijuana under California law.

His statements with respect to -- his statements with respect to the Tenth Amendment then, which were intertwined with his congress clause argument, are equally suspect. The commandeering doctrine, which was developed in the *Hodel* case in dicta and then actually used by the Supreme Court in the *New York versus United States* case and in the *Printz* case,

involves situations where it's an actual order to the states themselves to do something. In the *New York versus United States* case, it was you shall take possession of low-level radioactive waste. In the *Printz* case, it was that local law enforcement officials were required under federal law to do background checks for purposes of enforcing the federal Brady Law Gun Control ordinance.

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completely occupied the field and said any law that California passes with respect to marijuana legalizing it, making it illegal, discussing it at all is preempted without violating the Tenth Amendment.

It's also equally clear that Congress could have given the states a choice and said either enact as your standard the very same standard we've enacted or do nothing at all and that would not have violated the Tenth Amendment. So it's clear that the Controlled Substances Act's determination that laws that conflict with -- state laws that conflict with the Controlled Substances Act, i.e., which are an obstacle to its

accomplishment of its purposes and objective are preempted. Because that's legitimate authority under the commerce clause, the tenth amendment is simply not applicable to that at all.

So unless there's any questions from the court regarding these arguments, I'll turn over to Mr. Wall the issue of the California Constitution.

THE COURT: Thank you, Mr. Bunton.

MR. BUNTON: Thank you, Your Honor.

THE COURT: Mr. Wall.

MR. WALL: Before I begin, Your Honor, San Bernadino wanted to add some comments to the --

THE COURT: Pardon me.

MR. WALL: I believe San Bernadino wanted to add a few comments.

THE COURT: Mr. Green.

MR. GREEN: Thank you, Your Honor.

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THE COURT: Let me inform everyone that I anticipate taking a 20-minute recess about 20 to 30 minutes from now, in other words, about an hour or an hour and 15 minutes to go for the hearing.

Mr. Green.

MR. GREEN: Than you, Your Honor.

Once again, my name is Alan Green. I'm a Deputy County Counsel for the County of San Bernadino.

I would just like to focus my comments on a portion of the Court's tentative. At page four of the tentative, the Court acknowledges that there is a positive conflict that exists under Health and Safety Code Section 11362.71, subsection (e), and if I understand the Court's reasoning, the Court has chosen to reconcile that language or that conflict by interpreting that section only as barring the ability of law enforcement to make arrests under state law. So if I'm correctly interpreting this, the law enforcement would still have the option or discretion to make arrests under federal law.

THE COURT: That's Correct.

MR. GREEN: The question that I have is that I believe that the state legislature has actually implied a broader intent in this respect. I believe the Court has noticed and we've noted in our brief that in -- there's at least six other statutes where the state legislature has attempted to exempt the possession or use of marijuana from criminal sanctions. However, in this

section they don't, and this section again says that law enforcement cannot

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arrest a person for use or possession of marijuana. The section itself makes no attempt to distinguish between state law or federal law. The discrepancy there seems to be if the state had intended to exempt this portion they would have said so expressly as they did in the other sections, and the fact that --

THE COURT: That's addressed in my footnote three in the tentative.

MR. GREEN: I understand that, but I believe that if you would read it otherwise, to read it as the court does, then under the *Romero* decision where conflict does not occur if the -- unless the language does violence to the terms of the statute. By interpreting section 11362.71(e) as excluding state -- arrests under state law and federal law, then you are, in fact, doing violence to the language of the statute and therefore running afoul to the Supreme Court's interpretation under *Romero*.

THE COURT: I'm not sure I follow that. Would you please lead me through that, Mr. Green, as to how it does violence to the language?

MR. GREEN: Primarily because if it was the state legislature's intent that any arrest or -- excuse me -- if the state legislature's intent that arrests were barred regardless under state or federal law for use or possession of marijuana, to now interpret it as to only meaning limit that language to arrest under state law,

you're acting contrary to the intent of the legislature when it enacted 11362.71(e), that it is not consistent with the

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language of the statute or the program.

THE COURT: Does that require me to conclude that the California legislature believed that it had the power to prevent law enforcement from making arrests under federal law?

MR. GREEN: I wouldn't second-guess the legislature on that one way or the other, Your Honor, but it would seem consistent with the idea you would want people to possess and utilize marijuana for medical purposes and to allow them to be arrested otherwise would be inconsistent with that ultimate goal.

THE COURT: Thank you, Mr. Green. I understand the argument. Would you like to continue?

MR. GREEN: Just one further comment and that's with respect to the question Mr. Bunton has raised, his arguments concerning obstacle to the enforcement of federal law, and that is primarily that if I -- again, as the court has already said, the sheriffs are interpreted as having the option to arrest under federal law but not state law, I note in the opposition papers filed by the state and the intervenors that they believe that sheriffs do not necessarily have this discretion. They cite penal code section 836 which says that a law enforcement officer has discretion, but I guess now, as I understand the court's ruling, the court is saying that

that discretion can be exercised freely then to make arrests under federal law and we don't have that type of a conflict.

THE COURT: Well, that goes a little beyond the [p.27]

issues before me today --

MR. GREEN: Okay.

THE COURT: -- But I understand the argument that you're making.

MR. GREEN: Yes.

With that, Your Honor, I'll submit.

The only other point I wanted to raise is something that we didn't specifically address at the outset, and that is that the County of San Bernadino and Sheriff Penrod also join with County of San Diego in its moving papers argument.

Thank you.

THE COURT: Thank you, Mr. Green.

Mr. Wall.

MR. WALL: Thank you, Your Honor.

I'm going to address -- as you asked, not repeat my written arguments but address the tentative ruling of the Court and particularly the ruling under the

California constitutional argument. The basis of your argument -- factual basis of your argument was that, one, a stand-alone system was created, two, that a voluntary system created, and three, that system that was created, that program that was created is such that it doesn't conflict or interfere with the purpose of Proposition 215. That factual basis is suspect for a couple reasons.

One, when you look at the purposes of Proposition 215 which was to admit to facilitate the distribution of and possession of marijuana for those who

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had a medical use for it under California state law and to decriminalize in part the sections for possession under California state law, first noting that we didn't challenge in our lawsuit, in our pleadings or any of our contentions, the actual possession statutes or the decriminalization of California state law. The part of your factual argument was that the stand-alone system creates a different implementation, and because it's voluntary and stand-alone, therefore it doesn't add to Prop 215. However, that's looking at it from the perspective of the individual user through the lens of the purpose of Prop 215.

Let's unbundle that. One, it does affect the individuals who are required -- mandatorily required to comply with its provisions, namely the county of Merced's public health director. That individual and the county therefore is required, mandated in an additive way, in a different way than the voters in enacting Prop 215 may have contemplated is required to implement in an unfunded state mandate a card

program. Now, whether or not it's voluntary for people to participate, people in our county have asked for a card program, and we are now under a mandate to implement that card program and that was done without voter approval. That was done under the guise of a clarification.

Now, you're moving then to a legal basis in your tentative ruling, which is the *Quackenbush* ruling, and the appellate court guidance. Your basic premise is that the individuals don't have to participate because their rights are not amended or in some way repealed by the new

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legislation. However, the rule, and I cite to you the case *Franchise Tax Board versus Cory*, is at 80 Cal.App. 3d 772, and this is cited in the moving papers. The rule is that "The aim is to clarify or correct uncertainties which arose from the enforcement of existing law" --

THE COURT: Pardon me, Mr. Wall. If you could, please slow down a little bit. I think you're making it difficult for the court reporter. We all have a tendency to read quickly in these circumstances, but I'd ask you to slow down a little bit.

MR. WALL: Certainly, Your Honor.

So if the aim is to clarify or correct uncertainties which arose from the enforcement of an existing law, that is, proposition 215, after Proposition 215 was enacted by voters in 1996, many problems of enforcement occurred. In fact, I participated myself in

the case of *John Doe versus the County of Ventura* where someone was suing the County of Ventura to figure out what amount of marijuana they could possess under the statute and asking the appellate court for guidance. In that case Appellate Court Justice Arthur Gilbert said this is not something that we can opine on. My point being that proposition 215 did, in fact, cause uncertainties to exist and SB420 was enacted by the legislature to clarify and to correct those uncertainties in part.

So under *Franchise Tax Board versus Cory*, if the aim is to clarify or correct uncertainties which arose from the enforcement of existing law or to reach certain

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situations which were not covered by the original statute, that is amendatory even though its wording does not purport to amend the language of the prior act. That is a type of improper amendment which should have gone back to the voters of the State of California so that they could have said, this is the type of card system that we would like to see implemented, this what we had in mind when we wanted to allow people to access marijuana.

In a recent case which was dismissed in another court of appeal, the *Richard Davis* case, there a medicinal marijuana user sued because he said under Prop 215 I had the unlimited right to possess marijuana without having big brother or somebody else come along and impose upon me by force of the local regulations some participation in a card program, albeit it was voluntary, still the force of the law

existing was enough and sufficient to cause that plaintiff to bring a suit to try to clarify whether or not SB420 was mandatory. Clearly, SB420 should have been a proposition that was brought back to the voters so that they could have said, this is what we intended in implementing proposition 215.

Furthermore, the proposition SB420 restricts the manner in which both public health director and the sheriffs deal with medical marijuana. In essence, a medical marijuana cardholder would have a get-out-of-jail-free card in our county. Should they be given a recommendation by their physician and given a card, if the sheriff were to arrest them for possession and they were to have the -- be

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below the requisite amount of marijuana in their possession, and they were to show their card, they would be exempt from arrest and prosecution as restricted in SB420. Clearly, that was amended for and different from what the voters intended when they enacted Prop 215.

The final point is this emphasis in your opinion on the interference aspect with the purpose of prop 215 as an interesting and contrast to the Court's lack of focus on the purpose or ends test under the positive conflict analysis for purposes of the federal constitution. As discussed by San Diego, the obstacle prong of the positive conflicts analysis where we are -- in essence, under section 903, we have to look as to whether or not those laws can stand together. The emphasis of this standing together encourages not only means of looking at the end, which is the physical impossibility

type test or how -- in essence, your ruling is saying, hey, there's nothing that requires anyone to possess marijuana and therefore it's not in direct conflict.

Well, the problem is that the Controlled Substances Act -- the reasoning is incomplete because the controlled substances act contemplates not only requirement of possession but facilitation of the use and distribution of marijuana, and those are crimes in their own right under that same act, and those are the type of things that the requirement of SB420 and Proposition 215 require. In essence, they require director of environmental health and our sheriff to facilitate possession, distribution, and use

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of marijuana, and to facilitate -- in the eyes under the federal law facilitate drug abuse.

One final point, with respect to the California constitutional issue is this, that nowhere in prop 215 was the transportation of medicinal marijuana addressed, and yet under the SB420, the transportation of medical marijuana is now allowed. This is clearly a wholesale addition to an amendment to the statute and wasn't contemplated by the voters of the State of California and would cause that inevitable distribution for drug abuse as discussed by the -- by, I believe, Justice Scalia in the Oregon case.

Finally, with respect to the Oregon case, it is important to note in that particular case, which the defendants rely on, there the Court was looking at the conflict -- in San Diego they address it, but I want to clarify. The Court was looking at the conflict between

the clear language of the act and the prohibition with respect to whether drugs can be administered for patient-assisted suicide, and the court included that in terms of the state's police power you can't use federal authority to invalidate by regulation the state law under the type of commandeering doctrine, and so the distinction being that here marijuana as a class one listed narcotic is clearly seen by the federal government to have no medical purpose whatever at all. So there is no -- there is no possibility of confusion with respect to that, that there's no factual possibility of confusion because on the one hand under federal law possession is illegal, the state law it is allowable.

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That's all.

THE COURT: Thank you, Mr. Wall.

Is there anyone else that would like to be heard from the plaintiffs' side before I shift to the defense side?

All right. I believe I should hear perhaps from one of the attorneys representing the defendants, at least we call them defendants.

MR. WOLF: If you look at our side, you'll know.

The Court: Mr. Wolf.

MR. WOLF: I think the state is going to speak first, but should we take a break?

THE COURT: All right.

Ms. Lopez, how long would you expect your argument to be approximately?

MS. LOPEZ: Very brief, Your Honor. I would think about five minutes.

THE COURT: Well, let's do that, and then we'll take a recess. Then I'll come back and return to the defense side.

Would you like to proceed?

MS. LOPEZ: Yes. Thank you, Your Honor.

Good afternoon, Your Honor. Leslie Lopez, Attorney General's Office on behalf of the State Defendants.

I'm not here to argue against anything in the tentative ruling. I'm just here to respond to a few points that the Counties have raised today. One very important

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component that I think the counties have left out is that in order to adopt their theory that obstacle conflict applies and the states may only adopt laws that are mutually supportive of a controlled substance act, that really leaves out the evolution that has taken place with respect to Tenth Amendment jurisprudence in the last ten, 15 years or so, and the 1963 cases that the county cited really predate the current federal theory that the federal government cannot require the states to be their complete ally in implementing or furthering a federal regulation, and that's exactly what

they ask the court to do when they ask you to adopt the obstacle conflict analysis. The cases that we --

THE COURT: That's the argument I believe you were making on page 15 of your opposition of plaintiffs' motions.

MS. LOPEZ: 13 through 15, Your Honor.

THE COURT: Thank you.

MS. LOPEZ: In the more modern cases that we cite, they reflect the current trend in federal law, that the federal government cannot require the states to be their exclusive ally. That simply cuts against state rights, and if you construe the words of section 903 of the Controlled Substance Act in light of the view of state's rights, it's very clear that Congress did allow the states to adopt laws that stray from the federal view, and the closest case that is under the modern Tenth Amendment view is the *Southern Blasting* case that we cited, and that case construes language that, other than four words, is identical to

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section 903. So under the current Tenth Amendment rules, the federal government can entice the states to carry out federal programs, but they can't force the states to do that, and that's what the counties asking to do.

THE COURT: Ms. Lopez, as I understand the argument of the state, they believe the positive conflict mentioned in section 903 is the test as opposed to the, shall we say, common law test of obstacle, and then I

noticed in your papers that you argue if the obstacle test is applied the plaintiffs still lose; is that correct?

MS. LOPEZ: Correct, because it's a strictly voluntary program, and so, you know, again, nobody is forcing anybody to do anything that --

THE COURT: What is your response to Mr. Wall's argument that it may be voluntary from the point of view of the user but not voluntary from the point of view of the counties and the medical directors involved in implementing the identification card program.

MS. LOPEZ: Well, I'm not sure if I really followed his argument that there's no state law violation and there's no -- again, they're not being forced to do anything that would be in violation of federal law. They're simply being asked to carry out state law.

I also point out that the *Franchise Tax Board* case that he cited is really not on point because that was a budget bill that dealt with state expenditures, and in that bill the state legislature included language that undercut the role of the voters when they adopted a separate law, and

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that's really not what's going on here. In SB420, it does what the voters asked the state to do when they adopted Proposition 215 is to help facilitate Proposition 215.

The only other point I would add, Your Honor, is that the argument that SB420 does not limit itself to state criminal law enforcement. I don't think that's

correct. Everybody agrees and the state agrees that nothing precludes federal criminal enforcement, and we've never taken that position, and we don't think that's a fair reading of section 11362.765. So Proposition 215, it really relates only strictly to state criminal enforcement, and it doesn't authorize any federal exemption to federal criminal prosecutions and it doesn't encourage anybody to violate federal law.

THE COURT: .765 or .71, subdivision (e)?

MS. LOPEZ: 11362.765. It speaks strictly in terms of state law, state criminal penalties.

THE COURT: Well, that's the one that mentions in particular seven statutes and subdivision (a), and that's what you meant to say?

MS. LOPEZ: Yes, Your Honor. It's --

THE COURT: The court's tentative addressed with respect to how it could be interpreted, 11362.71, subdivision (e). What is the state's view of the Court's interpretation of that in light of *Romero* as outlined in the court's tentative ruling?

MS. LOPEZ: I think the Court has adopted an interpretation that is valid and is correct. It's possible

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to interpret this to apply only to state criminal prosecutions, and that's proper interpretation to uphold the validity of the statute.

THE COURT: Thank you, Ms. Lopez. Anything further?

MS. LOPEZ: Unless you have any questions, Your Honor.

THE COURT: No. Thank you.

MS. LOPEZ: Thank you.

THE COURT: Counsel, we're about to take a recess. Let me give you a preview though of a question I intend to ask each of you with respect to your clients when you come back so you may think about it during the recess and perhaps even one from each side may address it if everyone agrees, and that is, must all plaintiffs and all defendants win or lose together or should the court make distinctions? I brought this up, I think, at the last hearing and said I would be addressing it today.

If there's nothing else then, we'll take a recess now for 20 minutes, and when we come back, I'll keep hearing from the attorneys representing the defendants.

Ladies and gentlemen in the gallery, I'd like to thank you very much for your courtesy and your patience today, and we welcome you to come back in 20 minutes.

We're in recess.

(Recess.)

THE COURT: Welcome back, ladies and gentlemen.

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The Court recalls the matter of County of San Diego versus San Diego Norml, case GIC860665.

May we return please to the argument of counsel representing defendants.

MS. LOPEZ: Your Honor, if I could just very briefly clarify one statement.

THE COURT: Certainly.

MS. LOPEZ: Thank you, Your Honor.

When I spoke about federal prosecutions, what I meant to be clear about is that it's our position that federal prosecutions are not reached by proposition 215 in any way, but it's a question of whether local law enforcement can arrest. Under the guise of federal law, it's an issue that's just outside the scope of this litigation.

THE COURT: Thank you.

Who will be next? Mr. Wolf?

MR. ELFORD: Good afternoon, Your Honor. Joe Elford for patient intervenors.

I would like to speak briefly to the Tenth Amendment slash field preemption issue that has been raised as well as if the Court has any questions on standing, I'm happy to address those as well, and cocounsel will take the other two issues that Your

Honor pointed out of preemption generally as well as the unconstitutional amendment portion of this case.

THE COURT: Thank you, Mr. Elford. Please continue.

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Mr. Elford: Your Honor, what's very important, perhaps the most important part of this argument we've heard today and the argument we've seen in the briefs is that the plaintiffs admit or concede, and I'm quoting from Mr. Bunton, "they," referring to Congress, didn't intend to occupy the field. Plaintiffs have consistently conceded that field preemption is not at play here, that Congress did not intend to occupy the field. However, plaintiffs continue to use a test of field preemption, essentially saying that if you don't legislate as strictly as we do, then you can't legislate in this field at all, but they also admit that Congress didn't intend to put that test to the State of California.

Let me try to illustrate this. It depends on how you look at these laws. One way to look at the laws is that the glass is half empty. The other way to look at it is the glass is half full. In particular, if you look at all of this from the perspective of a clean slate, assuming that we live in a world where there were no laws that controlled this, and at that point congress decided that it would make marijuana possession illegal for all purposes, and then the State of California said, okay, we'll meet you 90 percent of the way, we will make marijuana illegal for all purposes except for medicinal purposes. At that point from our perspective, the glass would be 90 percent full, but at that point the State of California is supporting the federal government's

policy of attempting to regulate marijuana, it's just not doing it at completely 100 percent

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level.

Having said that, the only response that the plaintiffs have to looking at it from that perspective is, well, in certain cases where there's field preemption, you actually have to regulate at least as strictly as the federal government or you cannot regulate at all, and for that proposition, they cite to the case, and this is where it gets into the Tenth Amendment, they cite to the case of *New York versus United States*.

Of course, *New York versus United States* was a field preemption case. That was a case that involved radioactive waste. Congress wrote the law to indicate that there was field preemptions, and the specific quote that they cite says, where Congress intends to occupy the field, then it can put -- it can constitutionally put the state to the choice of regulating strictly as we do or not regulate at all, but that's not what Congress did, and there are reasons why Congress didn't do that.

First, it would lead to completely absurd results. If it were true that Congress intended by its antipreemption provision to mean that states had to regulate at least as strictly as we do or not regulate at all, you would have to throw out dozens of marijuana statutes in dozens of states. Presumably, any state that didn't actually have marijuana laws that were as strict -- and I'm not talking just medical marijuana laws, all marijuana laws -- any state that didn't have

marijuana laws that were at least as strict as the federal government, according to the plaintiffs' rationale, would get preempted and have their scheme thrown out, and that's an absurd result, and Congress presumably recognized that and was very careful with its antipreemption provision and for that very reason did not enact a field preemption provision.

It would also potentially run afoul of the Tenth Amendment, and Your Honor does not have to even get to the Tenth Amendment because Congress didn't do this field preemption, but if it were the case that the states were forced, just because it had previously made marijuana illegal for all purposes, that it were prohibited, that its hands were tied in not being able to legislate otherwise at this point. That would constitute impermissible commandeering of the legislative process.

I think one thing that Mr. Bunton said that's telling here is that before the Controlled Substances Act, states had cart blanche to do whatever regulation or nonregulation they wanted, but the CSA changed that. Instead, the CSA told states what laws to enact, and we disagree with that perspective of this entire regulatory scheme. Congress purposely did not tell states what laws to enact. If they did, they would run afoul of the Tenth Amendment. We don't believe Your Honor needs to reach that question, but we would like to point out that the perspective of the plaintiffs in this case raises some great constitutional concerns that Congress wishes to avoid.

THE COURT: Thank you, Mr. Elford.

Are you the one I should ask on the defense

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side to respond to Mr. Wall's argument that the MMP requires the counties to implement a system that arguably facilitates the transport and distribution of marijuana that may not even be used for medicinal purposes but because, shall we say, diverted use, or will that be Mr. Wolf?

MR. ELFORD: No, Your Honor. Cocounsel will be responding to that, those types of arguments.

THE COURT: Thank you, Mr. Elford. Anything further?

MR. ELFORD: No, Your Honor.

THE COURT: Mr. Wolf, are you next?

MR. WOLF: I am.

THE COURT: Could you begin with that last point, please.

MR. WOLF: Certainly, Your Honor.

I'm Adam Wolf with the ACLU Drug Law Reform Project for the patient intervenors.

Your Honor, the question of facilitation is merely a reiteration of an argument that has been expressly rejected by the Ninth Circuit, and that's the -- in the *Conant* case. In the *Conant* case the court was wrestling with whether a physician recommending medical marijuana to a patient would be guilty of certain laws, you know, to wit aiding and abetting, of

conspiracy, and in that case the court said, and this is at pages 635 to 636, that there is an intent element with those crimes, and I'm going to read you the last and most important sentence on this point. "Holding doctors responsible for whatever conduct the

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doctor could anticipate a patient might engage in after leaving the doctor's office is simply beyond the scope of either conspiracy or aiding and abetting," and the same is true here.

I have a number of points that I'd like to get to, and let me just speak to them relatively quickly, and then I'm happy to engage with any questions the Court may have. There has been a discussion of whether the section 903 in the Controlled Substances Act anticipates solely positive conflict preemption or rather obstacle preemption as well, and the touchstone to this inquiry, as we've talked about, I'm not going to repeat too much of what's in our briefs, as Your Honor recognized in the tentative, is congressional intent. Congress could not have been more clear here. It said, quote, unless there is a positive conflict so that the two cannot consistently stand together.

Now, we recognize that's a physical impossibility. We point to *Southern Blasting*, we point to *Gonzales v. Oregon*, and I'd also like to point to the *Cannabis Buyers Club* case which is the Judge Breyer case at F. Supp. 2d, page 1100. Judge Breyer says, of course that these -- that California's laws cannot be preempted, they're merely withdrawing criminal penalties. I point further to the *U.S. v. Leal* case, which is the Sixth Circuit case, where it says, "withdrawing criminal

penalties simply is not the type of action of which preemption is made."

The counties make it seem like there is one general test for preemption. You apply all of these various

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types of preemption lists. It's simply not the case, you have to look at exactly what Congress enacted and here a nonpreemption provision or an antipreemption provision. I think Justice Scalia in the *Gonzales v. Oregon* case called it a nonpreemption provision.

So applying all of these tests would subvert the intent of Congress. It would be looking past the language of the statute itself. It would be like convicting somebody, you know, under the statutory scheme for robbery and then penalizing them for homicide. It's just looking at a different type of statutory scheme. Of course, Congress could have said, well, we're going to make these states regulate exactly as we do or not at all. Let me get back to that in a moment because the county's argument is actually they must regulate exactly as the federal government does or perhaps even more stringently so, leaving apart the last part of this.

In some ways they recognize that the states need not regulate controlled substances at all, and I point to, for instance -- I believe it's San Bernadino's reply brief at page eight where it says that, and yet at the same time, as we've heard in oral argument today, there's been the suggestion that, no, the states can't do that. They have to do exactly what the federal government does or maybe more strictly.

Let me offer one more reason why Congress enacted the nonpreemption provision that it did. If Congress said you can regulate exactly as the federal

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government does or not at all, the federal government would run the risk that some states would say, we don't want to regulate exactly as you do and therefore we're not going regulate at all, and that would be a serious imposition on the federal government. Nowhere do we say that California's scheme implied the invalidity of any federal law. We've been quite clear about that. We do think that there is a way to read the statutes as -- and let me point to the tentative here.

It is on page four. It's the last paragraph on page four. There has been some talk about what state law enforcement officers can and cannot arrest for, and I think there is a -- so two points about this. The first is counsel for San Bernadino asked, does your tentative ruling mean that officers are, quote, free to arrest for violation of federal law, and the Court said, quote, that goes beyond the issues presented today, and I think that's exactly right. We don't need to reach that issue, but if we were to reach that issue, there is nothing that would be in positive conflict between the Controlled Substances Act and a state scheme that says state law enforcement officers cannot arrest people for possessing a controlled substance under state law or under federal law.

We see this happen all the time. The immigration context is one example that comes to mind where states around the country say we're not going to -- that

our state law enforcement officers are not going to expend resources for violations of federal immigration law. There

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is simply nothing in positive conflict between the Controlled Substances Act and such a state regulatory scheme. There is no physical impossibility there. We're not saying that this requires any conduct that violates federal law.

One last -- two last things, Your Honor. The first is San Diego has pointed to this Washington case, I believe it's an unpublished opinion, where they say, you know, that's about the -- that's about the state court applying -- the court applying obstacle preemption, but that case is no different from the controlled -- the *Cannabis Buyers Club* case where it merely stands for the proposition that the federal government can enforce federal law. We nowhere take exception to that. These state statutes don't apply to invalidity of law whatsoever. We're not saying that the federal government cannot enforce federal law. All we're saying is that the state doesn't have to be an active participant with the federal government.

Lastly, San Diego, I think quite candidly said that it would read section 903 and particularly the word "positive" as meaningless, as nugatory, as surplusage, and whenever possible, you know, the cannon of statutory interpretation is that we should read a definition or a meaning into every word of every statute. We think that Your Honor's interpretation of section 903 is exactly right, and unless there are

further questions from the bench, we would like to submit on our papers and agree with the tentative.

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THE COURT: Thank you, Mr. Wolf.

I do have a question for you, and that is, could you please elaborate on your client's request for injunctive relief.

Mr. Wolf: Sure.

Injunctive relief is generally to require a party to comply with the law, and so if the counties who thus far have not complied with the law because they have contended that these statutes are unconstitutional, if there is a ruling that the statutes, in fact, are not preempted, as the tentative says, then we would just turn to the counties and say, are you going to comply with the law, and if the counties would say yes to that, we -- there's no need for an injunction.

The Court: Well, in terms of the Court's ruling, what are you asking the Court to address?

MR. WOLF: We're asking, first and foremost, the Court to address exactly what it addressed in the tentative, and that is, if you will, the declaratory portion or the declaratory relief portion of our complaint, and I think we can leave it for another day, perhaps with the Court to retain jurisdiction for future enforcement actions, whether an injunction would be appropriate in this case, Your Honor.

THE COURT: Well, as I understand it, Mr. Wall has informed us that the merced plaintiffs' request for injunctive relief is withdrawn and no longer part of this case, but let me confirm that.

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MR. WALL, Do I understand that correctly?

MR. WALL: Yes, Your Honor. What you understand is that we had asked for injunctive relief. In light of the fact -- in light of the tentative ruling what is said is that it is likely we would withdraw that request because it would be our intent of our county, if you sustain your tentative ruling, to ask for a stay of the Court's order while it's on appeal so that the effect of your ruling, in essence, would be to continue to leave open the issue while it's on appeal, there would be no reason for the injunctive relief per se.

THE COURT: Well, as I said, that was a tentative ruling and I heard argument today. I intend to take this under submission. So if I change the ruling in favor of your client, is your client requesting injunctive relief?

MR. WALL: Yes, Your Honor.

THE COURT: If so, why?

MR. WALL: In that case, yes, Your Honor, but in light of that I think we would need to further brief the issue because neither side, quite candidly, has briefed that issue as injunctive relief unless this Court feels it has sufficient legal and factual basis in light of its ruling, its ultimate ruling to issue that relief.

THE COURT: Mr. Wolf, would you like to try to refine your client's position?

MR. WOLF: Sure. Perhaps maybe to suggest something that might obviate the need for further briefing

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which is just that, you know, we will for the moment not request an injunction, and if this court were to retain jurisdiction over this case, we would like to just sit down with the counties, have a discussion with them, are they going to comply with the law. I'm assuming that they'll say yes and there will be no need for an injunction. So, in other words, we're not asking for an injunction at this point, Your Honor.

THE COURT: Is it appropriate for the Court to explicitly retain jurisdiction in a case like this for the potential of injunctive relief later?

MR. WOLF: I've done that in cases before. I believe that courts do do that, Your Honor, and I think that would be appropriate, but I'm hoping that we don't need to get there. I'm hoping that we can work this all out.

THE COURT: Mr. Wall, do you have a view on that?

MR. WALL: Could you repeat your question?

THE COURT: As to the propriety of the Court retaining jurisdiction to address perhaps later the need for injunctive relief.

MR. WALL: I likewise have done that in cases, Your Honor. Certainly, the county would agree to that.

THE COURT: All right. Mr. Wolf, shall I ask you whether you would speak for your clients or all defendants as to whether all plaintiffs and all defendants win or lose together or are there distinctions to be drawn?

MR. WOLF: I can speak for our clients, and

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perhaps if the state or San Diego Norml disagrees with it, they can say so. I think we all do win or lose together, Your Honor.

THE COURT: Thank you. Thank you, Mr. Wolf.

MR. WOLF: Thank you.

THE COURT: Would anyone else like to be heard on the defense side?

Does anyone disagree with Mr. Wolf's position that all plaintiffs and all defendants win or lose together?

Ms. Lopez.

MS. LOPEZ: We agree, Your Honor.

THE COURT: Mr. Elford.

MR. ELFORD: Certainly, we agree with that, Your Honor.

THE COURT: Mr. Blank.

MR. BLANK: We agree as well, Your Honor.

THE COURT: Let me go down the line while we're on this subject and ask everyone on the plaintiffs' side, and then if plaintiffs would like to respond, you have some time left.

Mr. Bunton, on behalf of your client?

MR. BUNTON: We agree that everyone stands together, Your Honor.

THE COURT: All right. Thank you.

Mr. Larkin.

MR. LARKIN: Agreed, Your Honor.

THE COURT: Mr. Green.

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MR. GREEN: Yes, I'm with Mr. Larkin, Your Honor.

THE COURT: Mr. Wall.

MR. WALL: Your Honor, we stand consistent with the county together.

THE COURT: Thank you. I just wanted to clarify.

All right. Would any other plaintiffs' counsel like to be heard in response?

MR. BUNTON: Yes, Your Honor.

Thomas Bunton on behalf of the County of San Diego, Your Honor.

The statements that were made regarding field preemption, in the brief statements that were made regarding that I'm afraid aren't consistent with what field preemption is as identified by United States Supreme Court. *New York versus United States*, a Tenth Amendment case, isn't a field preemption case. Field preemption occurs in a situation where the feds or the federal government says states may enact no laws that deal with the particular subject. Whether or not they conflict, whether they support, whether they have -- if they have anything to do with the subject matter of the federal regulation, then field preemption means that the states can enact no law that deals with that. That is not the situation in like this *New York* case where it's a minimum federal standard and the states are allowed specifically to either enact the federal standard or to go above the minimum standard. That specifically

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authorizes the states to enact a law in the field, and that's not field preemption at all.

With respect to the Tenth Amendment argument that the state's attorney argued that *Southern Blasting* supports their argument under the Tenth Amendment because that represents the new jurisprudence of the courts with respect to Tenth Amendment analysis, but *Southern Blasting* isn't a Tenth Amendment case at all. The court didn't talk

about the Tenth Amendment at all in that case. It was a simple preemption case citing 903.

The state also seems to make the argument that it's not an obstacle to the accomplishment of the purposes and objectives, meaning the medical marijuana laws are not an obstacle to the purpose of accomplishing -- the purposes and objectives of the federal law because it doesn't require conduct that the state law -- that the federal law prohibits. That's basically going back to the impossibility test and arguing that obstacle to the accomplishment of the purposes and objectives is the same as whether it's physically impossible to comply with both.

Obviously, since they're two separate tests, they have to have separate meanings, and it can't be that it's not an obstacle simply because it doesn't require people to do things -- it, being the state law, doesn't require people to do things that the federal law prohibits. If that were the test, then it's the same as the impossibility test, and it would be nothing.

With respect to the comments that were made

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regarding positive conflict and the word "positive" as to whether it was surface-age or whether it was nugatory, this isn't the only situation in which courts as well as legislators use words to define the same thing. You know, in these conflict cases you often see referred to oftentimes as a direct conflict. What does the word "direct" add to conflict? As far as I can tell, absolutely nothing, but the courts often refer to a direct conflict. I have not seen them refer to an indirect

conflict much like I've not seen them refer to a negative conflict either, but in here there is just no indication of what the word "positive" means that would add to or change in any way the normal conflict analysis. There is no case law that supports the notion that it means that you don't look into whether a law is an obstacle to an accomplishment of the purposes and objectives of the federal law.

If Congress were going to enact a provision that says states are allowed to pass laws that are an obstacle to the purposes and objectives of this law, you would think they would do it in a more direct way than inserting the word "positive" in front of the word "conflict." It just simply defies logic that that's what Congress intended when they inserted the word "positive." It's much more logical that they inserted it like courts often do the word "direct" in front of the word "conflict," just to emphasize that the test is whether it's a conflict or not, direct conflict or a regular old conflict, really no distinction between the two.

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With respect to the *Assenberg* case, again, the court's holding is specific there that there is a conflict and the state law is preempted, and that's the Washington Medical Marijuana Law. It's not that the court is just saying -- it's not that the court is just saying that of course federal law trumps because the state law doesn't have the ability to regulate the conduct of the federal government or doesn't have the ability to regulate federal prosecutors. No, the holding is specific. It considered 903. It considered the argument made by the defendants in this case that

under the preemption clause there isn't a conflict, there isn't a positive conflict here, and the court said that's wrong, there is a positive conflict because it authorizes conduct that the controlled substances act prohibits.

It didn't say that it specifically authorizes people to violate federal law. As we pointed out in our brief, state legislatures rarely say -- when they enact the state law, they're rarely so brazen to say, under this law, you are exempt from complying with federal law. If that is the only time that there were conflicts and cases were found to be preempted, state legislators are smart enough to understand they cannot exempt individuals from complying with federal law. So what do they do? They do exactly what was done in this case and that is they purport the authorization to be only under state law, but it authorizes conduct that's prohibited by federal law.

There's only one conduct at issue. The

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underlying conduct that is subject to federal and state law is exactly the same, and that is use, possession, and cultivation of marijuana, and state law -- and we've cited the provision specifically. They don't just say it's not a crime. The state law provisions say it's authorized, and so California has authorized the exact same conduct that the federal law has prohibited, and that is where the preemption arises here. It's clearly an obstacle to the accomplishment of the purposes and objectives of Congress to combat drug abuse, to prevent diversion, and therefore, the law is preempted.

Unless there's any questions from the Court, I'll rest.

THE COURT: Thank you, Mr. Bunton.

I believe plaintiffs' time is expired, maybe a few seconds, less than 60, according to the clerk.

MR. WALL: May I use those 60? Three points.

THE COURT: Yes, Mr. Wall.

MR. WALL: One, I wanted to say on the issue of the Attorney General, it's interesting, in 1971 the Attorney General opinion from on the single convention on narcotic drugs, at the start of the opinion it says, "the conclusions are as follows: the single convention on narcotic drugs" --

THE COURT: Excuse me, Mr. Wall, but in spite of your time limitations, I have to insist that you read slowly enough for the court reporter to take it down.

MR. WALL: -- "prohibit the legalization of marijuana by any of the 50 states." I cite that for the

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Court, and that's at 1971 -- or 54 op. Attorney General of California 57.

Second, I also wanted to note in the California constitutional argument that the proposition could have enacted, similar to lots of other propositions, specific language which allowed the legislature to amend and clarify and it did not. It had a language

that encouraged the state and federal governments to have a plan, but it did not authorize the legislature which other propositions do, specifically to amend and to correct and clarify. I want to make that point.

Finally, I wanted to make a point under the issue of -- the further argument under 11362.71(e), not only is transportation but delivery, cultivation, and possession, all four of those, to possess, transport or deliver or cultivate, those four verbs are not necessarily -- do not necessarily track the verbs that are used, in particular transportation and delivery.

Thanks.

THE COURT: Thank you, Mr. Wall.

Would any defense counsel like to respond until their time limits are up?

MR. WOLF: Can I confer with my colleagues for about 30 seconds?

THE COURT: Certainly. Certainly.

MR. WOLF: Thank you.

(Discussion off the record.)

Mr. Wolf: Your Honor, just about 30 seconds.

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Adam Wolf again for the patient intervenors.

There has been the suggestion that the Washington state's medical marijuana laws have been completely preempted, and I just wanted to dispel that that is a myth. To the extent that Adam -- not having the exact name at the ready, did anything and said that to the extent that it prohibited the enforcement of federal law, that it was then preempted, but it's an important point because throughout all of this briefing, throughout everything that has been written about this case, the counties have not cited to a single case that says the withdrawal of criminal penalties is preempted under federal law.

Thank you, Your Honor.

THE COURT: Thank you, Mr. Wolf.

Well, counsel, I'd like to return in closing to the injunctive relief issue. It's a little vague right now in terms of where it stands on the record. I understand that a stipulation may be in the offing, and I'm not going to require you to formulate and articulate such a stipulation this afternoon off the cuff. I don't think that would be fair, but if there is such a stipulation, I'd like to receive it, and if there is not a stipulation with respect to how the Court should address injunctive relief in general terms regardless of whether I decide for plaintiffs or decide for defendants, if there is not a stipulation, any party may submit a brief solely on that issue as to the propriety or impropriety of injunctive relief, not to exceed five pages and no later than December 1st.

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Please give me the stipulations before then if you're not going to -- or by December 1st if there is going to be -- in other words, I'd like to know is there a stipulation or is there a dispute for which I should be receiving briefs because it has been largely unaddressed.

Any questions on that from the defense?

Any questions on that from the plaintiff?

All right. Then does any counsel disagree that, with the exception of the receipt of the stipulation or the briefs solely on the issue of injunctive relief, the matter is submitted? Does anyone disagree with that on the defense side?

Not hearing anything, does anyone disagree with that on the plaintiffs' side?

Not hearing anything except for the submission of the stipulation or the briefs solely on the issue of injunctive relief, then the matter is submitted.

I'd like to compliment counsel on both sides for the quality of the briefing in this matter and the quality of the argument this afternoon and for the professionalism that each side has displayed.

Thank you very much.

Court is now adjourned.

(Adjournment.)

State of California)
county of San Diego)

I, Susan Platt, an Official Reporter for the Superior Court of the State of California, in and for the County of San Diego, State of California, do hereby certify:

That as such reporter, I reported in shorthand the proceedings had in the above-entitled cause and that the foregoing transcript pages 1 through 58 is a full, true and correct transcription of the proceedings had at the aforementioned time and place.

Dated: This the 18th day of November, 2006, at
San Diego, California.

/s/

Susan Platt, CSR # 10266
Official Reporter
Superior Court
San Diego County,
California